रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 34] नई दिल्ली, अगस्त 20—अगस्त 26, 2023, शनिवार/श्रावण 29—भाद्र 4, 1945
No. 34] NEW DELHI, AUGUST 20—AUGUST 26, 2023, SATURDAY/SHRAVANA 29—BHADRA 4, 1945

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 17 अगस्त, 2023

का.आ. 1319.—राष्ट्रीय आवास बैंक अधिनियम, 1987 (1987 का 53) की धारा (6) की उप-धारा (1) के खंड (च) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, डॉ. जे रविशंकर, सचिव, आवासन विभाग, कर्नाटक सरकार के स्थान पर श्रीमती सारिका प्रधान, सचिव, सिक्किम आवास एवं विकास बोर्ड को अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, राष्ट्रीय आवास बैंक के निदेशक मंडल में निदेशक के पद पर नियुक्त करती है।

[फा. सं. 24/17/2010-आईएफ.II]

शिवानी गोयल, सहायक निदेशक

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 17th August, 2023

S. O. 1319.—In exercise of the powers conferred by clause (f) of sub-section (1) of section 6 of the National Housing Bank Act, 1987 (53 of 1987), the Central Government hereby appoints Smt. Sarika Pradhan, Secretary, Sikkim Housing & Development Board as Director on the Board of Directors of National Housing Bank, *vice* Dr. J Ravishankar, Secretary, Housing Department, Government of Karnataka, for a period of 3 years from the date of notification or until further orders, whichever is earlier.

[F. No. 24/17/2010-IF.II]

SHIVANI GOEL, Assistant Director

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(खाद्य और सार्वजनिक वितरण विभाग)

नई दिल्ली, 28 जुलाई, 2023

का.आ. 1320.—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय (खाद्य और सार्वजनिक वितरण विभाग) के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालयों, जिनके 80 प्रतिशत या उससे अधिक कर्मचारीवृन्द ने हिन्दी का प्रवीणता/कार्यसाधक ज्ञान प्राप्त कर लिया है, को राजपत्र में अधिसूचित करती है:-

क्र. सं.	अधिसूचित किए जाने वाले केन्द्रीय भंडारण निगम के कार्यालयों का नाम
1	फाजिल्का
2	नाभा बेस डिपो
3	चनालो
4	भटिंडा
5	पठानकोट बेस डिपो
6	सरहिंद
7	मानसा
8	मोगा-2
9	अमृतसर-1
10	अबोहर
11	मोहाली
12	मोगा-1
13	गढ़शंकर
14	मुक्तसर
15	मंडी गोबिन्दगढ़
16	नाभा (सामान्य)
17	गुरदासपुर
18	चंडीगढ़

[फा. सं. ई-11011/1/2008-हिन्दी(321924)]

राजेन्द्र कुमार, संयुक्त सचिव

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Food and Public Distribution)

New Delhi, the 28th July, 2023

S. O. 1320.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (use for official purpose of the Union) Rules, 1976, the Central Government hereby notifies the following offices under the administrative control of the Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution), whereof 80% or more staff have acquired the working knowledge of Hindi:

Sl. No.	Offices of Central Warehousing Corporation to be notified
1	Fazilka
2	Nabha BD
3	Chanalo
4	Bathinda
5	Pathankot B.D.
6	Sirhind
7	Mansa
8	Moga-2
9	Amritsar-1
10	Abohar
11	Mohali
12	Moga-1
13	Garhshankar
14	Muktsar
15	Mandi Gobindgarh
16	Nabha (General)
17	Gurdaspur
18	Chandigarh

[F. No. E-11011/1/2008-Hindi(321924)]

RAJENDER KUMAR, Jt. Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 22 अगस्त, 2023

का.आ. 1321.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम,1948 (1948 का 34) की धारा 91क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, बीएसईएस यमुना पावर लिमिटेड के कारखानों और स्थापनाओं के नियमित कर्मचारियों को उक्त अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट राजपत्र में इस अधिसूचना के प्रकाशित होने की तारीख से एक वर्ष की अवधि के लिए प्रभावी रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

(1) कारखाना और स्थापना छूट प्राप्त कर्मचारियों के नाम और पदनाम विनिर्दिष्ट करते हुए, कर्मचारियों का एक रजिस्टर रखेगी;

(2) कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;

(3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;

(4) उक्त कारखाने और स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रवर्तन के अध्यधीन था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों से युक्त होगी जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

(5) निगम द्वारा उक्त अधिनियम की धारा 45 की उपधारा (1) के अधीन नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या निगम का इस प्रयोजन के लिए इस निमित्त प्राधिकृत कोई अन्य पदधारी—

(i) उक्त अधिनियम की धारा 44 की उपधारा (1) के अधीन, उक्त अवधि के लिए प्रस्तुत किसी विवरणी में अंतर्विष्ट विशिष्टयों को सत्यापित करने; या

(ii) यह अभिनिश्चयन के लिए कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चयन के लिए कि कर्मचारी, नियोजक द्वारा दिये गए उन प्रसुविधाओं को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार है या नहीं; या

(iv) यह अभिनिश्चयन के लिए कि उस अवधि के दौरान, जब उक्त कारखाने और स्थापन के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा—

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे इस अधिनियम के प्रयोजन के लिए आवश्यक समझता है ; या

(ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह कार्मिक के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना; या

(ङ) यथास्थिति अन्य शक्तियों का प्रयोग करना जो विनिर्दिष्ट किए जाएँ ।

6. विनिवेश या निगमीकरण के मामले में, प्रदत्त छूट स्वत: रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट के लिए समुचित सरकार को आवेदन करना होगा ।

[सं. एस-38016/48/2018-एस.एस-I]

धीरेन्द्र मोहन खरे, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 22nd August, 2023

S.O. 1321.—In exercise of the powers conferred by section 88 read with section 91 A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of factories and establishments of M/s BSES Yamuna Power Limited from the operation of the said Act. The exemption shall be effective for a period of one year from the date of publication of this notification in the Official Gazette.

2. The exemption is subject to the following conditions namely:-

(1) the factories and establishments shall maintain a register of the employees specifying the names and designations of the exempted employees';

(2) the employees shall continue to receive such benefits under the said Act to which they would have been entitled to on the basis of the contribution paid prior to the date from which exemption granted by this notification operates;

(3) the contribution for the exempted period, if already paid, shall not be refundable;

(4) the employer of the said factory and establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) a Social Security Officer appointed by the Corporation under sub-section (1) of section 45 of the said Act or other official of the Corporation authorised in this behalf by it, shall, for the purpose of —

(i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 of the said Act for the said period; or

(ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory and establishment to be empowered to —

(a) require the principal or immediate employer to furnish to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such Social Security Officer or other official and allow him to examine the accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine, with respect to any matter relevant to the purposes aforesaid the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said Social Security Officer or other official has reasonable cause to believe to be or to have been an employee ; or

(d) make copies of or take extracts from, any register, account book or other document maintained in such factory, establishment, office or other premises; or

(e) exercise such other powers as may be specified.

(6) In case of disinvestment or corporatisation, the exemption granted shall stand cancelled and the new entity may apply to the appropriate Government for exemption.

[No. S-38016/48/2018-SS-I]

DHEERENDRA MOHAN KHARE, Under Secy.

नई दिल्ली, 16 अगस्त, 2023

का.आ. 1322.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड, कोलकाता के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता, पंचाट (रिफरेन्स न.-03/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.08.2023 को प्राप्त हुआ था।

[सं. एल-30011/49/2017-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 16th August, 2023

S.O. 1322.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 03/2018) of the Central Government Industrial Tribunal cum Labour Court, Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to Bharat Petroleum Corporation Limited, Kolkata and Their Workmen which was received along with soft copy of the award by the Central Government on 16.08.2023.

[No. L-30011/49/2017-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 03 OF 2018

Parties: Employers in relation to the management of

M/s BPCL, Kolkata

AND

Their Workmen/ Union

Appearance:

On behalf of Management: M/s BPCL, Kolkata : Present

On behalf of the Workmen/ Union : Present

Dated 23rd February, 2023

AWARD

Both sides are present through their respective Ld. Counsels.

Today has been fixed for adducing evidence by the Union, but union has come with a verified application stating the concerned two dismissed workmen are not interested to pursue with the present reference case. Therefore, it has prayed for passing necessary order or an appropriate award. Let the petition be taken on record.

The present reference case has seen referred by the Ministry of Labour vide Order No. L- 30011/49/2017-IR(M) dated 03.10.2017 for determination "Whether the action of the Management is justified in denying the Post-Retirement Medical Benefit to two dismissed employees (workmen) viz. Sri Tapas Bhattacharyya and Sri Ram Chandra Bishoyi? If not, to what relief the concerned workmen are entitled to?"

Since the union which has espoused the cases of the above two workmen is not interested to proceed further with the hearing of the reference and as such, no dispute award is hereby passed.

Accordingly, Reference No. 03 of 2018 is disposed of without cost.

Send copy of this order/ no dispute award to the Ministry for doing needful.

Supply copy to the parties as per rule.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 16 अगस्त, 2023

का.आ. 1323.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ऑयल कॉर्पोरेशन लिमिटेड, हल्दिआ रिफाइनरी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता, पंचाट (रिफरेन्स नं.-25/2007) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.08.2023 को प्राप्त हुआ था।

[सं. एल-30011/49/2007-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 16th August, 2023

S. O. 1323.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25/2007) of the Central Government Industrial Tribunal cum Labour Court, Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to Indian Oil Corporation Limited, Haldia Refinery and Their Workmen which was received along with soft copy of the award by the Central Government on 16.08.2023.

[No. L-30011/49/2007-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 25 OF 2007

Parties: Employers in relation to the management of

Indian Oil Corporation Ltd., Haldia Refinery

AND

Their Workmen/ Union

Appearance:

On behalf of Management: **Indian Oil Corporation Ltd.,**

Haldia Refinery : Present

On behalf of the Workmen : None

Dated 13th March, 2023

AWARD

The Management is present through its Ld. Counsel.

Summon/ notice of appearance issued to the Union in the address given in the Order of reference has returned undelivered with postal endorsement insufficient address as per track report.

The Record reveals, the union has been conducting the case and lastly the case was fixed for further cross-examination of Union's witness Ashok Kumar Maity since 08.12.2011. The evidence from the side of Union has been closed vide Order Dated 04.04.2019, when union has failed to produce the W.W No. 1 Ashok Kumar Maity for his cross-examination and has stopped appearing. Thus, case was fixed for evidence from the side of Management since 12.06.2019.

Unfortunately, till date the Management too has failed to adduce evidence.

Therefore, this Tribunal decides to dispose of the present Reference Case No. 25/07 on the basis of materials available on record.

The Govt. of India, Ministry of Labour vide its Order No. L-30011/49/2007 IR(M) dated 25.09.07 has referred the following issue for adjudication:-

"Whether the action of the management of the Indian Oil Corporation Ltd., Haldia Refinery in closing down and shifting the LPG Bottling plant resulting in consequential changes of service condition of the concerned workmen is justified? If not, what relief the concerned workmen are entitled to?"

The union in its claim application has alleged that Management unilaterally decided to shift LPG Bottling Plant from Haldia Refinery which has been running for more than thirty years and in its place decided to establish B.G gantry for Naphtha unloading thereby affecting the service conditions of those workmen working for bottling plant. Contractor's workmen too were withdrawn after the plant was closed on & from 1st March, 2007. That due to redeployment of the workmen of LPG Bottling Plant to different departments of Haldia Refineries it grossly changed in their service conditions, they have been posted in those departments where risk of life is high. That they have lost their seniority. Thus, it has prayed for restoration of operation of L.P.G Bottling Plant and not to discriminate the workmen of bottling plant at the time of promotion and not to change their service conditions.

On the other hand, the management has contended in its w/s the union in question has no locus standi to challenge the decision of the Management as it is not a recognized union. The recognized union which represent the majority of the workmen of Haldia Bottling Plant has not raised any dispute as it has accepted the redeployment of the workmen of Bottling Plant to different departments of Haldia Refineries as they have been suitably redeployed in other section/ departments. At the Haldia Refinery itself with similar benefits and conditions of service as per rules.

The shifting of plant is purely a managerial decision and which was necessitated for Corporation's commercial exigencies and when this is redeployment of the workmen of the plant in different section and departments at the Haldia Refinery itself with similar benefits and service conditions cannot be termed as change of conditions of service.

That out of 49 contractor's workmen, 31 have been deployed at Hydro Crocker Project under different contractors and 18 have been paid one time lump-sum compensation on terms of settlement dated 13.04.2007.

Bottling Plant had to be dismantled to install Hydro Crocker Unit at Haldia, in order to meet the future fuel specification of petrol and diesel as per auto fuel quality norms of the Govt. of India and to improve Refinery profitability. Relocation of bottling plant is not the close of the plant. Thus, it has prayed for dismissal of the Reference Case.

Gone through the exhibited documents and from where it appears the LPG Bottling Plant at Haldia Refinery has already been relocated elsewhere i.e. outside Haldia and at its site new Hydro Crocker Plant has been established.

From Ext. W-6 it appears that there was 39 permanent workmen working at Bottling Plant. On the shifting of the plant outside Haldia, they have been redeployed within Haldia Refinery, but in different sections and departments under the same management, without affecting their seniority in the same pay scale and all prerequisite facilities to which they were entitled as employee of bottling plant.

Therefore, this tribunal does not find any change in the service condition of those permanent employee of LPG Bottling Plant on their redeployment in different sections and departments of the same management.

The documents filed by the Management shows that out of 49 contractor's employee, it has deployed 31 of them to different sections under different contractors and service provider M/s S.B Engineering had retrenched 18 workmen, but after providing them retrenchment compensation as admissible under I.D. Act, 1947 including ex-gratia payment.

Therefore, I do not find any merit in the dispute raised by the Union.

Consequently, the Reference stands dismissed.

Accordingly, dismissal award is hereby passed.

Reference Case No. 25/07 is dismissed without cost.

Send copy of this Award to the Ministry for doing needful.

Supply copy to the parties as per rule.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 16 अगस्त, 2023

का.आ. 1324.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड, एलपीजी प्लांट कोलकाता** के प्रबंधतंत्र के संबद्ध नियोजकों और **उनके कर्मकार** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता, पंचाट (रिफरेन्स नं.-24/2020)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.08.2023 को प्राप्त हुआ था।

[सं. एल-30011/23/2020-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 16th August, 2023

S.O. 1324.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. 24/2020)** of the **Central Government Industrial Tribunal cum Labour Court, Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Bharat Petroleum Corporation Limited, LPG Plant, Kolkata** and **Their Workmen** which was received along with soft copy of the award by the Central Government on 16.08.2023.

[No. L-30011/23/2020-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO.24 OF 2020

Parties: Employers in relation to the management of

M/s Bharat Petroleum Corporation Limited, LPG Plant

AND

Their Workmen

Appearance:

On behalf of Management: M/s Bharat Petroleum

Corporation Ltd., LPG Plant : Present

On behalf of the Workmen : None.

Dated 25th January, 2023

AWARD

The Management represented by its lawyer.

Today too the Union has failed to appear like on the previous date inspite of having knowledge about the pendency of present reference case, referred by the Govt. of India, Ministry of Labour at its initiative or having espoused the dispute against the Management before different Govt. Authorities.

Be that as it may, the Govt. of India, Ministry of Labour vide its office Order No. L-30011/23/2020 (IR-M) dated 14.12.2020 has referred the following issue for adjudication:-

"Whether the action of the management of BPCL, Raigunj Territory (LPG) in introducing the new machine without issuing notice under Section 9A of the ID Act is justified? If not, what relief the workmen are entitled to?"

Since the union after raising the dispute has decided not to pursue the case before the Tribunal for adjudication by keeping itself absent or not putting appearance, it can be said that union is no more interested to proceed further with the issue under reference.

Therefore, no dispute award is passed and Reference Case No. 24 of 2020 is disposed of.

Send copy to the Ministry

Supply copy to the parties.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 16 अगस्त, 2023

का.आ. 1325.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **स्वाति एयरपोर्ट सपोर्ट सर्विसेज प्राइवेट लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **उनके कर्मकार** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता, पंचाट (रिफरेन्स नं.-61/2014)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.08.2023 को प्राप्त हुआ था।

[सं. एल-11012/2/2014-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 16th August, 2023

S.O. 1325.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. 61/2014)** of the **Central Government Industrial Tribunal cum Labour Court, Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Swati Airport Support Services Pvt. Ltd.** and **Their Workmen** which was received along with soft copy of the award by the Central Government on 16.08.2023.

[No. L-11012/2/2014-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

RtEF. NO. 61 OF 2014

Parties: Employers in relation to the management of

Swati Airport Support Services Pvt. Ltd.

AND

Their Workmen/Union

Appearance :

On behalf of Management: **Swati Airport Support**

Services Pvt. Ltd. : Present

Contractor Employer : Absent

On behalf of the Workmen/Union : Absent

Dated 24th March, 2023

AWARD

The Management of Airport Authority of India is present. None appears from the side of the Contractor Employer and Union inspite of due service of notice upon Union as per tack report.

Record shows that since 11.02.2016 the union which has espoused the present dispute and has filed claim statement has not been taking any step or perusing with the the hearing of the case.

So, it can be assumed the union is no more interested with the dispute or issue "Whether the action of the Management of Swati Airport Support Services Pvt. Ltd. is justified in terminating the service of Sri Sankar Gupta w.e.f. 16.07.2013 is legal and /or justified? If not, what relief the workmen are entitled to?"

The union in its claim statement has alleged Mr. Shankar Kumar Gupta was engaged as Aero Bridge Operator on 15.02.2013 and prior to that, he was engage in different capacities since 2004 within the ambit of Principal Employer under different contractors.

That for no reason his service was terminated on 16.07.2013 without following the statutory obligation. Thus, union has prayed for his reinstatement with back wages.

The Airport Authority of India in its written statement has alleged since there exist no relationship of employer and employee between it and the concerned workmen, the present reference case is not maintainable against it and prayed for dismissal.

In the record I do not find such materials to prove the claim made by the union that concerned workman was working under different contractors engaged by A.A.I since 2004 or that he was retrenched from the service without following and complying the procedure under provision laid down in I.D. Act.

Therefore, No Dispute Award is passed and Reference Case No. 61 of 2014 is disposed of.

Send copy to the Ministry for doing needful.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 16 अगस्त, 2023

का.आ. 1326.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड, कोलकाता** के प्रबंधतंत्र के संबद्ध नियोजकों और **उनके कर्मकार** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता, पंचाट (रिफरेन्स नं.-01/2019)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.08.2023 को प्राप्त हुआ था।

[सं. एल-30011/51/2018-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 16th August, 2023

S.O. 1326.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. 01/2019)** of the **Central Government Industrial Tribunal cum Labour Court, Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Bharat Petroleum Corporation Limited, Kolkata** and **Their Workmen** which was received along with soft copy of the award by the Central Government on 16.08.2023.

[No. L-30011/51/2018-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 01 OF 2019

Parties: Employers in relation to the management of

M/s BPCL & Others

AND

Their Workmen/ Union

Appearance :

On behalf of Management :

On behalf of the Workmen : Ld. Adv. Mr. M.S. Dutta

Dated 14th March, 2023

AWARD

Both the workmen Md. Shakil and Sri Sankalpo Baran Hari are found present in the Tribunal along with their Ld. Counsel M.S. Dutta.

Sri Dipak Kr. Bhattacharya, the General Secretary, B.P.C.L Employee Union who has espoused this present dispute files a verified petition stating both the workmen are not interested to proceed with the present case. Therefore, he has prayed for passing necessary order.

The workman Sri Sankalpo Baran Hari files Xerox copy of his Aadhaar Card to prove his identity and duly signed by him and his lawyer on record. Let it be taken on record while Md. Sakil submits that he has not brought any of his identity issued by the Govt. to prove his identity, but Ld. Lawyer on record identifies himself.

The Govt. of India, through Labour Ministry and vide Order No. L-30011/51/2018-IR (M) dated 07.01.2019 has referred the following dispute to this tribunal for adjudication:-

"Whether redressal accorded by the Executive Director Aviation, BPCL, Kolkata in the appeal made by the workmen viz., Sri Md. Shakil and Sri Sankalpa Baran Hari is justified? If not, to what relief the concerned workmen are entitled to?"

Since the Union and workmen are not interested to proceed with the dispute and who have prayed for disposal of the case for non-presence and as such their prayer is allowed.

Accordingly, no dispute award is passed and Reference Case No. 1 of 2019 is disposed of.

All pending applications are disposed of.

Send copy to the Ministry for dong needful.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 16 अगस्त, 2023

का.आ. 1327.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **लाइफ इन्सुरेंस कॉर्पोरेशन ऑफ़ इंडिया** के प्रबंधतंत्र के संबद्ध नियोजकों और **उनके कर्मकार** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता, पंचाट (रिफरेन्स नं.-08/2003)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.08.2023 को प्राप्त हुआ था।

[सं. एल-17011/25/2002-आईआर(बी-II)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 16th August, 2023

S.O. 1327.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. 08/2003)** of the **Central Government Industrial Tribunal cum Labour Court, Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Life Insurance Corporation of India** and **Their Workmen** which was received along with soft copy of the award by the Central Government on 16.08.2023.

[No. L-17011/25/2002-IR(B-II)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 08 OF 2003

Parties: Employers in relation to the management of

LIC of India

AND

Their Workmen/Union

Appearance:

On behalf of Management: Mr. Avishek Guha, Ld. Advocate.

On behalf of the Union/Workman: Absent

Dated: 8th June, 2023

AWARD

By order No. L-17011/25/2002/IR(B-II) dated 31-01-2003, the Government of India, Ministry of Labour, has referred the following issue for adjudication by this Tribunal :-

> "Whether the action of the management of LIC of India in increasing the working hours on Saturday to eight hours to the Watchman, Liftman and Driver etc. w.e.f. 15-03-2002 without following the procedure under section 9A of the Industrial Dispute Act is justified or not? If not, what relief the concerned workmen are entitled to ?"

The Union which has espoused the above dispute in its claim statement has alleged that it is one of Registered Trade Union and recognised by the management of LIC of India. The management of Eastern Zonal Office by issuing letter dated 29-02-2002 informed the 43 workmen names mentioned in the claim statement and working in the capacity of Liftman, Watchman and Driver about change in their duty hours on Saturday from four hours to eight hours would be of eight hours and such change would take place from 15-03-2002.

It is the contention of the Union that appointment letters of those workmen specifically provide that working hours on Saturday would be four hours. Hat letters dated 29-02-2002 and 07-03-2002 were totally silent about payment of extra remuneration for working additional extra four hours on Saturday. The Union raised objection against such sudden change in the duty hours before the management but the management did not pay any heed to their representation for which they had to raise an industrial dispute before the authority concerned, but reconciliation failed. Hence this reference.

The management in its written statement has alleged that duty hours of driver, watchman and liftman was fixed as per establishment manual. The different division had fixed different duty hours in the appointment letters of watchman, liftman and drivers contrary to the codified hours of duty in the establishment manual. The service condition of the staff of LIC is not governed by the provision of West Bengal Shop and Establishment Act. The overtime is allowed only for those work which is necessary to dispose of the urgent matter of non-routine nature. The duty hours of those staff belonging to the category of Liftman, Watchman and driver have been changed from four/four and half hours to eight hours as per establishment manual.

That as per clause 55 of LIC (Staff Regulation) 1960 Corporation may sanction overtime payment to its employees belonging to the class III and class IV who are required to work on Saturday or holidays or to put in extra hours on week days in connection with corporation work subject to the provision of local enactment.

Therefore, it has prayed for dismissal of the reference.

The Union in order to prove its case has examined Sri Shyamal Kumar Chakraborty, Watchman, as WW-1, Sri Swapan Kumar Bedajna, a member of the Union and High grade Assistant of Insurance Company as WW-2, Sri Haradhan Majumder, Watchman as WW-3 and Sri Khokon Singh, Driver as WW-4.

From the side of the said Union 14 documents have been produced and which have marked as Exhibit-W-1 to W-14.

From the side of the management Smt. Ranjita Swain, Administrative Officer was examined as M.W.1, Sri Dipak Kumar Ghosh, Secretary, Office Service Department of Eastern Zonal Office as MW-2, Sri Anup Kumar Ghosh, Assistant Secretary, Office Service Department of Eastern Zonal Office as MW-3, but management has failed to produce Sri Subrata Bose whose evidence-in-chief on affidavit was filed. Thus incomplete evidence of Sri Subrata Bose is hereby declared expunged. From the side of the management five documents have been produced and which have been marked as Exhbiit-M-1 to M-3/2.

It is undisputed fact, earlier the office of LIC used to have full five working days from Monday to Friday and half working day on Saturday. Therefore, appointment letters of those 43 workmen in the category of Liftman, Watchman and Driver, show that their daily working hours was eight hours and four hours on Saturday. Further, their appointment letters contain a clause apart from the limit prescribed their actual working hours will be subject to change from time to time as per the requirement of the office. If more than one shift is worked, the workman is liable to transfer to one shift to another. Some of the appointment letters contain the following condition :-

"Subject to the provision of the local Shop and Establishment Act daily working hours will be eight hours excluding lunch interval on full working days and four/four and half hours on half day. Subject to this limit, the actual working hours will be prescribed by the office from to time."

The impugned letter dated 27-02-2002 issued by the Regional Manager of Eastern Region, LIC of India, the root cause of the present dispute shows the Management had informed the concerned workmen about change in the working hours on Saturday and the reason for the change. It was written in the dispute letter dated 27-02-2002, that assuming Shop and Establishment Act of West Bengal was applicable to the Building Maintenance Staff of the LIC of Indi, at Zonal Office, Kolkata, the working hours was fixed less than eight hours on working Saturday. Since the State Act is not applicable to LIC and as such the duty hours of Building Maintenance Staff on working Saturday was increased from four and half hours to eight hours w.e.f. 15-03-2002.

Perused those exhibited appointment letters produced from the side of the Union. Indeed, those appointment letters contains a clause with regard to the working hours and which shows that working hours for those Building Maintenance Staff i.e. Liftman, Watchman and also that of Driver, their working hours has been prescribed as follows :-

"8 hours during week days from Monday to Friday and four or four and half hours on Saturday and such working hours is subject to local Shop and Establishment Act. That their working hours limit is also subject to change as and when prescribed by the office from time to time."

By issuing letter dated 27-02-2002 the management as disclosed to those liftman, watchman and Driver, that Shop and Establishment Act, West Bengal is not applicable to LIC of India.

It is a matter of common knowledge that LIC is a Govt. of India Undertaking and is governed by the LIC Act, 1956 and which is a Central Govt. undertaking and the State Govt. has no control over the affairs of LIC and its employees. Therefore, this Tribunal is of view mentioned of application of Shop and Establishment Act of West Bengal in the appointment letters of those 43 workmen is unwarranted. Therefore, the union cannot take advantage of such unwarranted, improper clause contained in the appointment letters of those employees.

That apart, it is a matter of common knowledge in the earlier days LIC used to function six days a week like nationalised banking institution i.e. from Monday to Friday as full day and Saturday half day. Subsequently, there was a change in the working days in LIC like nationalised banking sector whereby Second and fourth Saturday of every month was declared holidays/ non-operational days while first, third and fifth Saturdays were made working days/operational days. At present the working days of LIC is five days a week.

A question may arises under such changed circumstances with regard to working days. Whether the LIC can reduce the salary of the liftmen, watchmen and driver merely the working days from six days a week has been brought down in five days a week? The answer is "NO" as it will create a chaos in the establishment of LIC.

Further, a question may arises when LIC started functioning on first, third and fifty Saturday as full working days by declaring second and fourth Saturday as holidays, then staff who falls under the category of Bing Maintenance and Drivers can deny working on working Saturday a full working day, merely their appointment letters contain four hour working hours on Saturday. The answer is simply no as they being regular staff of LIC, their nature of job demands it is their bounden duty to keep the lift operation, office premises is opened before the start of working

hours and to close after the office hours during full working days including Saturday, which was made full working days from half day after declaring 2nd and 4th Saturday of a month holidays. Equally drivers need to attend their duty on working days and remain during working hours and they cannot say since their appointment letters provides four hour duty on full working Saturday by putting the admiration in lurch.

That apart, the management by issuing notice those 43 workmen individually on 27-02-2002 and 07-03-2002 have informed them in advance about the change in working hours and date from when it would effective i.e. 15-03-2002.

As per section 9A of the Industrial Dispute Act, the management need to give prior notice of changes it intend to bring on working days and working hours to the concerned workmen going to be effected by changes and can give effect to changes within 21 days of giving of notice. In the present case there appears due compliance of provision of Section 9A of the I.D. Act, 1947 by the management.

Further, this tribunal is of view, the proposal of changes effected by management to be sound, legal and valid as one cannot expect liftmen shutting lifts after 2 p.m., watchman closing the office before the working hours or Driver leaving the office during office hour on full working Saturday, when other regular office staff and managerial staff would be discharging their duty for eight hours and when the office is fully functioning merely their appointment letters speak of four hours duty on Saturday. There cannot be two types of working hours on full working day on Saturday in the same office and when the works of liftmen, watchmen and drivers have direct link with duty hours of office staff, managerial staff and business hours of Insurance Office. More so, the management has specially mentioned in their appointment letters its right to bring changes in the limit of their working hours from time to time. Therefore, the management of LIC was justified in bringing changes in the working hours of its staff who falls in the category of the liftmen, watchmen and Drivers.

Further, with the several changes that have been effected during long pendency of this case for last two decades, with regard to working days and working hours in LIC office i.e. from Six Days a week i.e. full five working days from Monday to Friday and Saturday as half day to 1st, 3rd and 5th Saturday of a month as full working days and 2nd and 4th Saturdays of a month as holidays and now Five days a week as working days and weekend i.e. Saturday and Sunday as Holidays, the dispute raised by union at this stage has become redundant and infructuous and this Tribunal does not find any merit in the dispute. Accordingly, the Reference case no.08 of 2003 is dismissed and Award of dismissal is passed.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 16 अगस्त, 2023

का.आ. 1328.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **लाइफ इन्सुरेंस कॉर्पोरेशन ऑफ़ इंडिया** के प्रबंधतंत्र के संबद्ध नियोजकों और **उनके कर्मकार** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता, पंचाट (रिफरेन्स नं.-18/2014)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.08.2023 को प्राप्त हुआ था।

[सं. एल-17011/6/2013-आईआर(एम)]

डी.के.हिमांशु, अवर सचिव

New Delhi, the 16th August, 2023

S.O. 1328.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. 18/2014)** of the **Central Government Industrial Tribunal cum Labour Court, Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Life Insurance Corporation of India** and **Their Workmen** which was received along with soft copy of the award by the Central Government on 16.08.2023.

[No. L-17011/6/2013-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 18 OF 2014

Parties: Employers in relation to the management of

Life Insurance Corporation Ltd.

AND

Their Workmen/Union

Appearance:

On behalf of the Management: Authorised Representative

On behalf of the Workmen/Union : Authorised Representative.

Dated: 24th July, 2023

AWARD

By Order No. L`-17011/6/2013 (IR-M) dated 19-02-2014, Central Govt., Ministry of Labour in exercise of power conferred by section 10(1) (d) and (2A) of the Industrial Dispute Act, 1947 has referred the following dispute to this Tribunal for adjudication:-

> "Whether the action of the management of Life Insurance Corporation of India, Eastern Zonal Office, Hindustan Building, 4, C.R. Avenue, Kolkata -700 072 for not granting recess hours to the Cashier from 13-15 hrs. To 14-00 hrs., as granted to all categories of the workmen, as demanded by the Union is legal and/or justified? If not, what relief the workmen concerned are entitled to?"

That the facts giving rise to this dispute in brief are that those staff who discharge the duty of Cashier in Life Insurance Corporation of India office, are deprived of lunch break or recess hours, which is otherwise extended to all the employees of Life Insurance Corporation of India and who are entitled to take lunch break and recess hours in between 13-15 hrs. to 14-00 hrs. Such discriminatory attitude of the management is inhuman labour practice, insatiable or exploitation and has caused gross injustice to the Cashiers. The management has adopted a step brotherly treatment towards the Cashiers without being supported by any circular.

The other financial institutions like Bank, Post Office etc. follow uniform recess hours for their entire staff including their Cashiers after three hours of duty. That forcing the Cashier of LIC of Eastern Zone to work at a stretch from 10 hrs. to 15 hrs., continuously without any lunch break, just to maintain continuity of work in the cash counter in the interest of customers is inhuman and which may have adverse effect on their health also. Thus by espousing the present dispute the union has demanded that there should be uniform lunch break or recess hours to the Cashier also like it is enjoyed by the other member staff of the Life Insurance Corporation of India. They have demanded that Cashier may be allowed a lunch break or recess hours in between 13-15 hrs. to 14-00 hrs. That the management may be directed to adequately compensate the Cashiers for denying them lunch break in between 13-15 hrs. to 14-00 hrs. from the date the present dispute has been raised.

On the other hand the management in its written statement has alleged that Cashiers are allowed lunch break or recess after cash hours i.e. after 3 p.m. The recess hours is allowed for 45 minutes subject to adjustment basis on actual office hours. Cashiers are selected for particular branch/branches on being fully aware of the nature of job and for which special allowance is paid. The Cash Counter of Life Insurance Corporation of India is kept open during regular normal lunch hours to cater those customers who come to the Insurance Office to pay premiums during normal lunch break. Therefore, the management has prayed for dismissal of the claim of the Union.

The Union in order to prove its case has examined Sri Biplab Talukdar, a Cashier of Life Insurance Corporation of India as W.W. No.1 and Sri Biswanath Tripathi, another Cashier as W.W. No.2. However, no document whatsoever has been produced from the side of the Union.

On the other hand, the Management has examined Sri Nirmal Alexander Karkata as M.W. No.1 and Sri Pratik Chatterjee as M.W. No. 2. From the side of the management following documents have been produced and exhibited:-

1. Circular dated 29-09-2011 – Exhibit-A.
2. Letter dated 05-04-2013 – Exhibit-B.
3. Application of Cashier Sri Biplab Talukdar (W.W. No.1) dated 19-12-1994 – Exhibit-C.

4. Letter of conversion from the Assistant to Cashier of Sri Biswanath Tripathi, (W.W.No.2) dated 01-08-2001- Exhibit-D.

Gone through the written argument submitted by the Ld. Counsel for both sides, both oral and documentary evidence which have come on record.

It is undisputed fact that the lunch break or recess hours of the Cashiers of Life Insurance Corporation of India was not same like that of the other member staff of the Life Insurance Corporation of India. The other member staff of the Life Insurance Corporation of India at the relevant time used to enjoy lunch break/recess in between 13-15 hrs. to 14-00 hrs., but Cashiers were not allowed to enjoy the said recess hours. Cashiers were entitled to recess only after the cash hour was over. The working hours of the cashiers at the cash counters was from 10-00 a.m. to 03-00 p.m.

From Exhibit-A, it appears that Chief of Finance and Accounts Department, Central Office, Mumbai by issuing a circular dated 29-09-2011, had directed all the offices of LIC to see that in case customers are found standing in queue at the hour of closing of the cash counter gate at 3-00 p.m. the office cannot return those customers who are standing in queue, the cashier is bound to accept the deposit for which they may have to work for extra-time.

Further, Ext.M-B a letter dated 05-04-2013 addressed to ALC (central), Kolkata by Executive Director (Personal), Central Office, Mumbai, shows the Labour Commissioner was informed that cash hours in LICI during weekdays to be for 5 hours a day and on Saturday it is 3 hours, but subject to local conditions and convenience of policy holders and further it has to be decided by Zonal Manager. Further, it has been stated that allowing lunch break between cash hours to cashiers like other employees of LIC is not found advisable as it makes inconvenient for the office going public who wish to deposit/remit the premium during their lunch break. Therefore, cashiers of LIC can enjoy lunch break immediate after cash hour is over and within normal working hours.

However, M.W. No.1 in his evidence has stated since 15-05-2021 uniform recess hours is adopted in all the offices of Life Insurance Corporation of India, for all the employees including Cashiers. Now, the recess hours is from 01-30 p.m. to 02-00 p.m. i.e. for half an hour and consequently the working hours of cash counter has been extended from 10-00 a.m. to 04-15 p.m. in place of earlier cash counter hours from 10-00 a.m. to 03-00 p.m.

It is also seen from the evidence of both the management witnesses, the cashier are selected amongst the eligible employees on their willingness applications and also based on certain other factors and for which they were/are paid special allowance.

Both the witnesses of the union who are two Cashiers of Life Insurance Corporation of India, too in their evidences stated that lunch break hours was fixed in Life Insurance Corporation of India for 45 minutes i.e. from 01-15 p.m. to 02-00 p.m. uniformly for all classes of the employees right from Sweeper to Chairman, but for Cashiers they can take break only after cash hours i.e. after 3 p.m.

So, it appears the management has admitted that no regular lunch break which is otherwise enjoyed by the other staff of Life Insurance Corporation of India was extended to the Cashiers, in the interest of those office going customers who could come to the branch to deposit/remit their premiums and for other related transactions only during their normal lunch break time and to prevent harassment to the customers. Therefore, the cashiers go for lunch on staggered basis.

Therefore, the only question that requires determination in the present reference is whether the Cashiers were discriminated for not extending recess hours during 13-15 hrs. to 14-00 hrs as enjoyed by their colleagues or superior officers and subordinate staff working in the same establishment?

There are other institutions like LIC, such as Bank, Post Office etc. There are several Revenue generating departments in Government offices where cash transactions from public are dealt with. In those departments uniform recess hours or lunch break is maintained as a general rule and no two different recess hours being maintained within the same establishment especially in respect of employees working in the cash counters. In some of those institutions/ establishment, it is seen transaction in one or two of the cash counters being closed keeping the other cash counters open to cater the customers coming to those institutions/establishment during recess hours and some of those financial institutions suspending the work in cash counters completely during recess hours. So, to this tribunal it appears to direct a cashier of LIC to work uninterruptedly without any break and continuously at a stretch for five hours just for the sake of some office going customers to be inhuman and unjust. Such rigorous duty hours may tell upon their both mental and physical health.

It is true the lunch break may vary from place to place or to establishment to establishment but all the employees working in those establishments are entitled to lunch break at least working for 03-00 to-03-30 hours in the first half of the day, but in the present case it is seen the Cashiers of Life Insurance Corpn. Ltd. were made to work continuously for five hours without any break from 10 a.m. to 03-00 p.m. whereas their other colleagues, senior officers and staff subordinate to them enjoyed uniform lunch break after working for three and half hours at the relevant period to be unjust and discriminatory. The union is justified in raising the present dispute.

However, it has been admitted by both sides that during the pendency of the present reference all the employees of LICI irrespective of their post and designation have been enjoying uniform lunch break or recess hours and the dispute raised by the union regarding disparity in recess hours for cashiers and rest of the employees of LICI under Eastern Zone has been settled by the Management by issuing revised working hours for the employees of LICI under Eastern Zone on 4th May 2021 and copy of which has been filed by the Management of LICI along with its written notes of argument.

Therefore, in view of the letter no. EZO/P&R/2021-22/Working Hours dated May 4 2021, the present reference is disposed of. Accordingly, Reference No.18 of 2014 is disposed of and Award is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 16 अगस्त, 2023

का.आ. 1329.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ऑयल कॉर्पोरेशन लिमिटेड, कोलकाता के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता, पंचाट (रिफरेन्स नं.-30/2022) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.08.2023 को प्राप्त हुआ था।

[सं. जेड -16025/04/2023-आईआर(एम)-51]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 16th August, 2023

S.O. 1329.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2022) of the Central Government Industrial Tribunal cum Labour Court, Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to Indian Oil Corporation Limited, Kolkata and Their Workmen which was received along with soft copy of the award by the Central Government on 16.08.2023.

[No. Z-16025/04/2023-IR(M)-51]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 30 OF 2022

Parties : Employers in relation to the management of

Indian Oil Corporation

AND

Their Workman

Appearance :

On behalf of Management : Mr. Sushil Karmakar, Advocate

On behalf of the Workman :

Dated: 12th June, 2023

AWARD

By Order No ID/Misc./8/(18)/2022-E.I/B.II dated 20-06-2022, the Deputy Chief Commissioner (central), Kolkata has referred the following dispute for adjudication by this Tribunal: –

"Whether the termination/disengagement of the service of Sh. Babulal Halder, Ex-Senior Operator (F) w.e.f.12-09-2008 by the management of M/s. Indian Oil Corporation Ltd., Marketing Division, Eastern Region, Kolkata is legal, just and proper? If not, to what relief the concerned workman Sh. Babulal Halder is entitled to?"

Indian Oil Corpn. is represented by its Ld. Counsel Mr. Sushil Karmakar.

The workman Sri Babulal Halder is present through his Lawyer, but I do not find power in favour of the ld.Lawyer in the record. The claim statement contained Vokalatnama which bears the signature of Sri Babulal Halder but it does not bear any signature or name of the Lawyer who is conducting the case on his behalf.

One Mr. S. Mukherjee, Advocate has fled written objection against the petition of the management dated 06-03-2023, but I do not find any power being executed by the workman in his favour.

Be that as it may, today has been fixed for hearing the application dated 06-03-2023 filed by the management challenging the maintainability of the present reference case. It has been alleged in the said petition that the workman Sri Babulal Halder was terminated from the service on 12-09-2008 on the finding of the Enquiry Officer in the domestic enquiry held against him on the charge of furnishing false school certificate at the time of his employment/recruitment.

Said Babulal Halder challenging such order of dismissal or termination of his service dated 12-09-2008, had filed a case under section 2A of the Industrial Dispute Act, before this Tribunal in the year 2018 and which was registered as CGIT-9/2018. That when he found that his case was barred by limitation in view of the provisions of section 2A(3) of the I.D. Act, he had filed an application for withdrawal of the case and which was duly allowed by the predecessor of this Tribunal on 12-07-2019. Then he filed WPA-7524 of 2022 before the Hon'ble High Court and which too he had withdrawn with a view to approach the appropriate forum for redressal of his grievances. Accordingly, said writ petition was dismissed for non- prosecution and liberty was given to the writ petitioner to approach the appropriate forum for redressal of his grievances and such order was passed on 20-06-2022.

That Deputy Chief Labour Commissioner, Kolkata referred the dispute on 20.06.22 to this Tribunal the time barred dispute for adjudication. Therefore, ld. counsel for the Management has prayed for dismissal of the reference. He in support of his contention has referred to Haryana State Cooperative Land Development Bank –vs- Neelaam, 2005 II CLR 45 and Smt. Swapna Adhikari (Smt) –vs- State of West Bengal & Ors., 2014 III CLR-352.

On the other hand it has been contended that order of withdrawal of previously filed case u/s 2A of the I.D.Act and writ petition will not operate as resjudicata as the dispute was not disposed of on merit. Since the Govt. has referred the dispute u/s10 (1) (d) and 2A of the I.D.Act, the same is not subjected to law of limitation.

On perusal of record, it appears that Sri Babulal Halder was terminated from the service on securing job in I. B.P. which was later merged with Indian Oil Corporation on the basis of the forged educational certificate and on the basis of the report of domestic enquiry held against him on and from 12-09-2008.

Challenging such termination order dated 12.09.2008, he has filed a case u/s 2A of the I.D.Act, being CGIT No.9 of 2018. In view of provision of sections 2A(2) and 2A(3) of the I.D.Act, a workman who has been discharged, dismissed, retrenched or otherwise terminated from service can file an application directly to the labour court or tribunal challenging the order of dismissal, discharge, retrenchment and termination before expiry of three years from the date of passing of order of dismissal, discharge, retrenchment or termination. So, it appears he filed the application u/s2A of the Act, almost ten years of his termination. Realising that his cause is barred by limitation, he withdrew the case on 12.07.2019. Then, he moved the High Court of Calcutta and filed WPA-7524 of 2022 and that too he withdrew on 20-06-2022 and the same was dismissed for non-prosecution. However, he managed to obtain an order to approach the appropriate forum for remedy. Thus, it appears the workman has misused the process of the Court and the Tribunal.

It further appears, DLC, Kolkata referred the dispute in question for determination by this Tribunal, the day the writ petition was withdrawn by the workman on 20-06-2022. It shows that workman had already raised an industrial dispute before the Labour Commissioner for reconciliation and such matter was pending before the Labour Commissioner when he filed the writ petition and he appears to have suppressed such fact before the Hon'ble Writ Court as Writ Court while dismissing the writ for non-prosecution has given him liberty to move appropriate forum for remedy.

Further, it is very interesting to note DLC, Kolkata, has failed to annex delegation of power u/s 39 of the Act, in its favour to refer the dispute directly to this Tribunal i.e. almost 14 years after his termination.

Prima facie it appears the dispute raised by the workman is barred by limitation in view of section 2A (3) of the I.D. Act.

That apart Hon'ble Supreme Court of India in Haryana State Cooperative Land Development Bank –vs- Neelaam, 2005 II CLR 45, has been pleased to hold "the aim and object of the industrial dispute may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would

automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of acceptance sub silentio."

The Hon'ble High Court, Calcutta in Smt. Swapna Adhikari –vs- State of West Bengal & Ors., 2014 III CLR-352 has been pleased to hold that "the legislature, however, has introduced sub-section (3) so that the case falling under section 2A, the employee approached within a stipulated time. The said sub-section (3) prescribed the time within which an application for adjudication of disputes is required to be filed before the Tribunal/Labour Court. This is the second application contemplated under the amended section. The first application is to be made before the conciliation officer. The workman is first required to approach the conciliation officer. This also appears to be the procedure under Rule 12A of the West Bengal Industrial Dispute Rules, 1958 vide Notification No.1806-ir Dated November 12 ,1993. However, the tribunal under no circumstances can accept and decide any such application under section 2A(2) after the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1). The amendments to section 2A enabling industrial workman to seek adjudication of his dispute has been introduced only on 15th September, 2010 by when the three-year period under sub-section (3) of section 2A had already expired. In terms of section 10 sub-section (1B) of the Industrial Disputes Act, 1947 as amended by the West Bengal Act, 33 of 1989 w.e.f. 8th December, 1989, it was open to an individual workman to apply to the Conciliation Officer for a certificate during the pendency of the conciliation proceedings, in the event no settlement has arrived at within a period of 60 days from the date of raising of the dispute. The Conciliation Officer thereafter on receipt of such application shall issue a certificate within 7 days from the date of receipt in such a manner as may be prescribed. The party may within a period of 60 days from the receipt of such certificate or when such certificate has not been issued within 7 days as aforesaid within a period of 60 days commencing from the date immediately after the expiry of 7 days as aforesaid, file an application in the prescribed form to the Labour Court or Tribunal as may be specified by the appropriate Government."

Further it has been held "Time stipulated for invocation of the forum of the Labour Court under sub-section (3) of Section 2A is "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of such service specified in sub-section (1)" thereof. Time limit for making an application to the Labour Court stipulated in sub section (3) of section 2A does not appear to have a bearing to the provisions of sub-section (2) of Section 2A. In any case right conferred under section 2A lapse immediately preceding the date of expiry of three years of the dater of dismissal etc. This sub section (3) of Section 2A operates independently, continuation of the conciliations notwithstanding."

Therefore, in view of above discussions and decisions of the Hon'ble Courts, this Tribunal is of view the present reference is barred by limitation and not maintainable. Accordingly, the Reference Case No. 30 of 2022 is dismissed being not maintainable and barred by limitation. Award of dismissal is hereby passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 16 अगस्त, 2023

का.आ. 1330.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार लाइफ इन्सुरेंस कॉर्पोरेशन ऑफ़ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता, पंचाट (रिफरेन्स नं.-07/2010) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.08.2023 को प्राप्त हुआ था।

[सं. एल-17011/1/2009-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 16th August, 2023

S.O. 1330.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 07/2010) of the Central Government Industrial Tribunal cum Labour Court, Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to Life Insurance Corporation of India and Their Workmen which was received along with soft copy of the award by the Central Government on 16.08.2023.

[F. No. L-17011/1/2009-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 7 OF 2010

Parties : Employers in relation to the management of

Life Corporation of India Ltd.

AND

It's Workman

Appearance :

On behalf of the Management : Mr. DilipKumar Kundu

On behalf of the Workman : Mr. Saibal Mukherjee

Dated: 18th day of July, 2023

AWARD

By order No. L-17011/1/2009-IR(M) dated 09-06-2009, the Central Govt., Ministry of Labour in exercise of power conferred under section 10(1) (d) and (2A) of the Industrial Dispute Act referred the following issue to this Tribunal for adjudication :-

> "Whether the action of the management of Life Insurance Corporation of India, in relating to its Eastern Zonal Office, Kolkata in imposing punishment of removal from Service w.e.f. 19-09-2005 on Sri Pallab Lodha, Ex-Sub-Staff, working in Zonal Office, Kolkata is legal and justified? To what relief he is entitled?"

The facts giving rise to such dispute in brief are that Sri Pallab Lodha was appointed as a Peon on 16-03-1993 and later his service was confirmed and made him permanent staff of LIC w.e.f. 16-03-1994. That Sri Pallab Lodha was a habitual absentee and used to remain on unauthorised leave, without prior sanction of leave or without any intimation to his immediate controlling officer.

That employees of Life Insurance Corporation. Ltd. of India, are governed by LIC of India (Staff) Regulations, 1960. Regulation 30 of LIC of India (Staff) Regulations ,1960 provides that no employee shall absent himself from his duty without having obtained the permission of the competent authority, nor shall he absent himself in case of sickness without submitting the medical certificate satisfactory to the competent authority. Regulation 21 of the said Staff Regulation provides that every employee of the Corporation shall at all times maintain absolute integrity and devotion to duty, shall confirm to and abide by the said regulations.

That during the period from 04-03-1999 to 18-01-2000 said Sri Pallab Lodha remained on unauthorised leave or absent for 154 days, without prior sanctioned and without informing the office. Consequently, he was charge sheeted for such unauthorised absence for 154 days on 08-02-2000. Against such charge domestic enquiry was initiated against him and he was found guilty of the charge. The Disciplinary Authority imposed penalty for such proved charge by withholding one increment for one year in terms of regulation 39 (1) (b) of the Regulations, 1960 on 28-11-2000.

Sri Lodha did not rectify himself and continued with his habit of absenteeism and again during the period from 08-08-2000 to 29-11-2000 he absented himself from duty for 81 days and that too without any prior sanction or without prior intimation to the authority concerned. Once again he was charge sheeted for remaining on such unauthorised leave for 81 days on 16-12-2000. Departmental enquiry was initiated against him on such charge. He was found guilty by the Enquiry Officer. The Disciplinary Authority concurred with the findings of the Enquiry Officer and imposed penalty by reducing basic pay of the by two stages, in view of provision of Regulation 39(1) (d) of Regulations 1960 on 03-09-2001.

Inspite of such second punishment Sri Lodha did not rectify himself and he stuck to his habit of absenteeism and remain absent for 25 days during the period from 14-05-2001 to 07-06-2001 and for 5 days during the period from 14-06-2001 to 18-06-2001 and remained in continued absence from 28-06-2001 till 14-09-2001. Accordingly, fresh charge was framed against him for remaining on such unauthorised absence on 14-09-2001. Once again departmental enquiry was started and in such enquiry he was found guilty and this time the disciplinary authority withheld three increments permanently in terms of regulation 39(1) (d) and 39(1) (b) of the Regulations, 1960.

Further, he remained absent for 207 days during the period from 11-01-2004 to 19-10-2004. That he having failed to maintain absolute integrity and devotion to duty and failed to serve the Corporation honestly and faithfully and acted in a manner prejudicial to good conduct and detrimental to the interest of the Corporation. He was once again charge sheeted for violating the provisions of regulation 21 and 30(1) of the LIC (Staff) Regulations,1960 and

charge sheet was issued on 07-12-2004. He was served with the provisional list of documents and provisional list of witness along with the charge sheet.

The concerned workman submitted his reply to the said charge on 24th December, 2004/8th January, 2005 and where he has admitted the charges. Therefore, management decided to initiate a departmental enquiry against him. The Enquiry Officer in its report dated 11th April, 2005 found the concerned workman guilty of the charge. Copy of the enquiry report was sent to the concerned workman for his comments on findings of the Enquiry Officer, but he did not bother to submit his reply. Then, the Disciplinary Authority issued a show cause notice proposing the penalty of his removal from his service on 29-06-2005.

The concerned workman submitted reply to the show cause notice on 21-06-2005. The disciplinary authority in exercise of the power conferred on him under regulation 39 (1) (f) read with Schedule-1 of the LIC (Staff) Regulations, 1960 imposed the penalty of removal of service w.e.f. 19-09-2005.

The concerned workman receiving the order of punishment imposed by the disciplinary authority preferred an appeal before the Appellate Authority. Appellant Authority dismissed the appeal and upheld the punishment vide order dated 29-12-2005.

Then, the concerned workman preferred a memorial as provided in Regulation 49 of Regulations, 1960 before the Chairman. The Chairman too rejected his memorial vide order dated 8th September, 2009.

Against the order of removal from service w.e.f. 19-09-2005 the concerned workman raised the present industrial dispute where he has alleged that he is a psychiatric and depression patient and because of his such illness he was unable to attend his duty regularly. However, he has alleged that the domestic enquiry which was initiated against him was in utter violation of the principle of natural justice where he was prevented from adducing evidence in his defence. He was not allowed to cross examine the witness produced from the side of the management. The management by adopting unfair labour practice has victimised him and illegally terminated his service. Therefore, he has prayed for setting aside the punishment of removal from service and prayed for his reinstatement with full back wages.

The workman has examined himself as W.W. No.1. From his side 25 documents have been produced and marked as Exhibit- W/1 to W/25 on admission by the management as reflected from order dated 14-11-2019. It also appears from the said order that the other four documents namely workman's letter dated 04-03-2000, medical certificate dated 30-07-2002, medical prescription dated 24-02-2005 and his another letter dated 20-12-2007 were not exhibited or admitted by the management, but the record shows the workman has failed to prove those four documents by examining the Doctor who issued those medical certificate and prescription and his own letters.

On the other hand the Management has examined Smt. Tuhina Bose, Assistant Secretary (P&IR) as M.W. No.1. The entire record of the departmental proceeding has been produced and which have been marked as Exhibit-M/A series i.e. M/A to M/A30.

Having heard the Ld. Counsels for the parties it appears that by raising present industrial dispute, the workman has challenged his order of termination and also the domestic enquiry.

It is an admitted fact, the concerned workman was a permanent employee of Life Insurance Corporation of India in the category of Peon or Group-D. That from Exhibit-A series it is seen that the concerned workman was not charge sheeted for the first time for remaining unauthorised absence for 207 days in the year 11-01-2004 to 19-10-2004 on 07-12-2004 but he was charge sheeted earlier on three different occasions for remaining on unauthorised absence for 154 days in the year 1999 on 08-02-2000, for 81 days in the year 2000 on 16-12-2000, for 48 days during the year 2001 on 14-09-2001.

That he was found guilty in all those three previous departmental enquiries for remaining on unauthorised leave without sanctioned of leave and without prior intimation. It also seen that in those earlier departmental enquiries, a lenient view was taken by the management of Life Insurance Corp. of India, first by withholding one increment for one year, in second time by reducing basic pay by two stages in time scale, thirdly permanently withholding three increments. So, It appears that in spite of having suffered such punishment, the workman did not bother to rectify himself and he remained absence for 207 days in the year 2004.

That remaining absent for 207 days in a year the management has charge sheeted him on 7th December, 2004 and the management not being satisfied with his reply to charge sheet decided to hold an enquiry on the charge. Exhibit-M-A/27 prove that one Sri Swapan Kumar Chakraborty was appointed as an Enquiry Officer and Sri A. Ghosh as a Presenting Officer. That as per the submission made by the workman he was permitted to take assistance of his co-employees Sri Chanchal Bhattacharya as his defence representative in such enquiry.

Exhibit-M-A/27 bears the signature of the concerned workman. It further shows that he admitted the charge framed against him. The Enquiry Officer to render just and fair enquiry decided to continue with the enquiry proceeding.

Exhibit- M-A/28, M-A/30 prove the concerned workman fully participated in the departmental enquiry. He was allowed to examine the documents relied by the management and he also permitted to produce documents. The departmental witness Sri N.C. Das, Administrative Officer, Marketing Department was cross examined by the defence representative of the workman. During such cross examination he had stated that that the workman used to remain absent continuously for number of days and that too without prior permission and in many occasion he was late in submitting his leave application along with medical papers.

Sri N.C. Das during his cross examination further stated that whenever the workman used to come to the office he used to behave properly as a normal person and used to discharge his duty normally. Such statement suggests the workman was normal and not a psychiatric patient as alleged by himself.

The concerned workman during the departmental enquiry and to the question put by the Presenting Officer why he was unable to produce the prescription of Dr,. J.K. Bhattacharya and produced cash memos of medicines. On such question he has stated that he lost the prescription of the Doctor and that he used to buy medicines on his own without any prescription and he never collected any cash memo and vouchers. Further he was put a question that the department could not locate Dr. Suraj Rawat whose prescription he had submitted and to such question he has stated that Dr. Suraj Rawat is a Nepali Doctor, but he could not give further details of the said Dr. Rawat. It is worth to mention here that among Nepali community title Rawat is not known. Such statement of the concerned workman makes his case of being a psychiatric patient and cause of his absenteeism doubtful.

The workman has filed a prescription and certificate issued by Dr. Soumitra Chatterjee, B.Sc, DHMS, FWT &PET dated 2005 and which have been marked as Ext.-W-12 and W-13 i.e for the period after the charge sheet dated 07-12-2004. He has failed to examine such homeopathic doctor to prove the contents of those two exhibits. The qualification of the above named Dr. as reflected from the prescription itself prove that he is not a psychiatrist.

That apart, prima facie from Exhibit- M-A series this Tribunal does not find any violation of principle of natural justice during domestic enquiry. Rather it appears the management held the entire enquiry in the presence of the workman and his representative and after serving the copy of documents on which it had relied and giving opportunity to the representative of the workman to cross examined the management witness. Nothing has come on record to show that unfair labour practice being adopted by the management of Life Insurance Corp. of India against the workman or the workman to be a victim of unfair labour practice. This tribunal finds just and proper domestic enquiry being held against the concerned workman.

In fact Exhibit-M-A. Series discussed above prove that the workman was guilty of chronic absenteeism. He was not bothered about the fact that due to his excessive absenteeism, the management may had to face administrative problem for not being able to utilised his service for the purpose of which he was recruited. It seems the workman had taken the management or Authority for granted for its lenient attitude towards him as he knew that management at the most would withheld his increment or reduce his pay scale as it was done in three previous occasions, but he would be enjoying full pay packet without doing any work or without attending office. Such conduct on the part of the workman proves that he had no regards to the service rules and regulations and also about the punishment for violation of service rules and regulations. It appears the he has crossed the limit of patience and tolerance of the management by remaining absent for 207 days in a period of 365 days. Out of remaining 158 days also it includes holidays e.g. Saturday, Sunday, Festival holidays and National Holidays. Further, nothing is there to prove substantial cause behind such excessive absenteeism. The plea of depression taken by him is not substantiated by cogent and reliable medical evidence.

Therefore, considering such conduct of the workman, this Tribunal holds the disciplinary authority has rightly removed him from the service.

That apart Exhibit-MA series shows that the disciplinary authority had taken the decision to remove him from the service after considering his past conduct also. Similarly, the Appellant Authority as well as the Chairman have rejected his appeal and memorial considering his past conduct and his no care attitude. Therefore, this Tribunal does not find any need to hear the workman on punishment as this Tribunal upheld the decision taken by the disciplinary authority in removing the working from the service of Peon from Life Insurance Corp. of India to be legal and proper. If this workman inspite of holding guilty for excessive absenteeism in four different domestic enquiry is allowed to continue in service, it would set a bad precedent in the establishment and other co-workers may be encouraged in violating the service rules and regulations. The engagement of such type of an employee would be a loss to the establishment.

Therefore, this Tribunal holds the management of Life Insurance Corporation of India is justified in removing Sri Pallab Lodha from the service of Peon w.e.f. 19-09-2005. And do not find an need to linger the proceeding further, for hearing on the point of quantum of punishment as imposed b the Disciplinary Authority. The discussion made above prima facie prove the non-reformist attitude of the concerned workman and as such the punishment of his removal from service do not appear to be disproportionate to the degree of guilt of the concerned workman.

Accordingly, Reference Case No. 07 of 2010 is disposed of.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 16 अगस्त, 2023

का.आ. 1331.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता, पंचाट (रिफरेन्स नं.-16/2001) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.08.2023 को प्राप्त हुआ था।

[सं. एल-30011/82/2000-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 16th August, 2023

S.O. 1331.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2001) of the Central Government Industrial Tribunal cum Labour Court, Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to Bharat Petroleum Corporation Limited and Their Workmen which was received along with soft copy of the award by the Central Government on 16.08.2023.

[No. L-30011/82/2000-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 16 OF 2001

Parties : Employers in relation to the management of

Bharat Petroleum Corpn. Limited.

AND

Their Workmen

Appearance :

On behalf of the Management of B.P.C.Ltd : Advocate Janardan Mondal

On behalf of M/s Security & Vigilance Agency: Absent

On behalf of the Workman : Absent

Dated: 7th June, 2023

AWARD

By Order No L-30011/82/2000 /IR(M) dated 30-04-2001, the Central Government, Ministry of Labour has referred the following issue to this Tribunal for adjudication.

"Whether the action of the management of Bharat Petroleum Corporation Ltd., Kolkata in paying 65% of the daily rate of wages instead of 100% for the period from 18-05-1996 to 31-03-1998 in terms of DGR instruction to the contractor i.e. Security & Vigilance Agency who is responsible for paying the same wages to security personnel is legal and justified? If not, what relief the workmen are entitled? "

The facts leading to this reference in gist are that Bharat Petroleum Corpn. Ltd. for safety and security of its establishment at Haldia, had engaged 17 ex-servicemen as Security Guards and 2 ex-servicemen as Supervisors through Directorate General Resettlement (DGR) sponsored agency M/s. Security & Vigilance Agency on terms and condition as set by DGR guideline/formula.

Those workmen were engaged earlier by another DGR sponsored agency named M/s. Purbanchal Ex-Servicemen Welfare Association. On termination of its contract on 18-05-1996 M/s, Security & Vigilance Agency was engaged and they continued to work under newly engaged service provider.

It is the contention of the Union that in view of DGR guidelines of 1993 they were paid 100% wages but after the engagement of the M/s. Security & Vigilance Agency their wages have been reduced to 65%. They were not

entitled to draw Minimum Wages Act applicable in West Bengal as they being ex-servicemen governed by DGR guidelines and in view of Govt. Of West Bengal notification dated 04-04-2000.

They have also alleged that they were not paid House Rent Allowance at the rate of 5% of the wages to which they are otherwise entitled to. Therefore, the Union has prayed that both the principle employer and the contractor employer to be directed to pay their arrear wages at 100% in view of DGR guidelines of 1993 for the period from 18-05-1996 to 31-03-1998.

The Principle Employer in its written statement has contended the security personnel engaged by it were/are sponsored by DGR. In view of circular issued by Commoder, Director (Employment) dated 01-02-1996, in order to bring parity in wages payable to DGR sponsored ex-servicemen throughout India, their wages were/are paid as per formula promulgated by DGR on Minimum Wages Act, which is revised periodically. In States, where wages have not been revised for last 12 months, the minimum wages (Basic+VDA) to be paid are not to be less than 65% of Delhi wages.The BPCL strictly followed such guidelines.

The security personnel engaged by it through M/s. Security & Vigilance Agency were entitled to draw wages @ 65% of prevalent Delhi wages w.e.f. 01-02-1996 and not 100% wages during the period from 18-05-1996 to 31-03-1998.

The tripartite settlement dated 27-06-1996 was executed amongst the Union, Contractor Employer and Assistant Labour Commissioner. BPCL was not the party to such settlement and as such BPCL is not bound by any terms and conditions of tripartite settlement. Therefore, it has prayed for dismissal of the reference being not maintainable.

M/s,. Security & Vigilance Agency, in its written statement stated that it had submitted its quotation before BPCL and as per para 4 of the quotation it had quoted wages @ Rs.2,171/- per month per security guard and Rs.2,836/- per month per security superior and in addition 25% of the total wages as service charges of the agency. As per DGR's letter No. 2112/SA/DGR/RW/ EMP/92 dated 30-03-1992, the DGR sponsored guards were entitled to 100% wages of 1993 and subject to upward revision.

On acceptance of its tender/quotation, an agreement was executed for a period from 01-06-1996 to 31-05-1998 for BPCL staff quarter and from 18-05-1996 to 17-05-1998 for BPCL project site. That both the contracts which it had with BPCL expired on 30-06-1998 after an extension.

It has also alleged that there was tripartite agreement on 23-07-1996 and it was agreed whenever the DGR revises the wages of security personnel the same will be implemented after acceptance and payment by BPCL, the Principal Employer. Arrear, if any, will be paid only on receipt from BPCL.

It has also alleged that rate of wages for security staff was revised by DGR w.e.f. February 1996 and fixed at Rs.3,288/- per month per security guard and Rs.4,371/- per month per security Supervisor.

Similarly, there was revision of wages by DGR w.e.f. February 1997, and the wage of security guard was fixed at Rs.3,498 per month per and Rs.4,611/- per month per security Supervisor.

During 1998 the wage was fixed at Rs.3,826/- per month per security guard and Rs.5,070/- per security Supervisor. But at the same time admitted the rate quoted by it in the agreement was not as prescribed or formulated by by DGR. Workmen refused to accept 65% DGR rate and demanded 100% DGR revised rate.

The Union to prove its case and claim has examined workmen Ashish Kumar and Sri Kalyan Das as WW-01 and W.W.-02.

From the side of the Union seven documents namely:-

(1) Memorandum of Agreement executed between BPCL and M/s. Security & Vigilance Agency dated 26-07-1996,

(2) Memorandum of Settlement under section 12(3) of the Industrial Dispute Act between Security & Vigilance Agency and their workmen before A.L.C.(Central) dated 23.07.1996,

(3) Xerox copy of Govt. Of West Bengal, Labour Department notification dated 04-04-2000,

(4) Revision of wages issued by Govt. Of India, Ministry of Defence dated November 1993,

(5) DGR instructions with regard to wage structure of security personnel as on 01-02-1997

(6) DGR instructions with regard to wages structure of security personnel as on 01-02-1998 and

(7) Guidelines for sponsoring and operating of security agency and related activities issued by Directorate of Employment, Directorate General Resettlement and which have been marked as Exhibit-W-1 to W-7.

On the other hand the Management of BPCL has examined in part one Sri S. Balakrishnan as M.W.no.1. Therefore, his part evidence is not considered and treated as expunged. However, management produced one Sri Avijit Chanda as M.W. 2.

The management of BPCL has produced Xerox copy of Exhibit-W-1 and copy of extract of DGR guideline concerning security agency from 01-03-1996 and which have been marked as Exhibit-M-1 to M-2.

The contractor employer has failed to pursue with the case and adduce evidence in support of the case by it in its written statement. It has been proceeded exparte.

From the pleadings of the parties, oral evidence of witnesses and from documentary evidence, it is appears the BPCL indeed all along used to engage ex-servicemen as security guards at its establishment and that too though DGR sponsored agency. With the change in agency on expiry of contract period security guards already working for it were/are absorbed by its newly engaged agency sponsored by Directorate General Resettlement, Ministry of Defence.

Ext-W-1/Ext-M-1 prove M/s. Security & Vigilance Agency was one of the sponsored agencies of Directorate General Resettlement. From the evidence of witnesses and from exhibited documents, further it is seen n expiry of contract it had with M/S Purbanchal Ex-Servicemen Welfare Association, it had engaged Security & Vigilance Agency as service provider for security guards for a period from 18-05-1996 till 17-05-1998. It has absorbed those 19 security personnel who were already working in the establishment of BPCL under another contractor.

It is the contention of the Union, those workmen in view of DGR guideline of 1993 used to draw 100% of wages. The Union exhibited order of revision of wages issued by the Govt. of India, Ministry of Defence in the month of November, 1993 as Exhibit-W-4. Exhibit-W-4 is not legible, but somehow it is seen that the minimum rate of wages applicable in National Capital Territory of Delhi for semi-skilled workmen which was Rs.1,176/- was revised to Rs.1,217/- and one who used to get wages at the rate of Rs.1,328/- was raised to Rs.1,369/-w.e.f. 01-09-1983.

M-2 is the extract of the DGR guidelines of the concerning security agency effective from 01-03-1996 which shows that wage structure as payable in Delhi for security guard was fixed at Rs.3,880/-, to Gunman at Rs.4,810/-, Supervisor at Rs.5,158/- and Assistant Security Supervisor at Rs.6,324/- and such wage structure was given effect from February, 1996. It further provides due to large variation in minimum wages in different states and unions and non-revision by the States and Unions, security personnel engaged outside NCT of Delhi should not be paid not less than 65% of Minimum Wages.

Exhibit-W-1 and Exhibit-M-1 shows that M/s. Security and Vigilance Agency was engaged as a service provider by BPCL for the period from 18-05-1996 to 17-05-1998 on the basis of agreement executed in between BPCL and the service provider on 26-06-1996. Therefore, the workmen engaged by M/s. Security and Vigilance Agency being governed by DGR guidelines, they are entitled not less than 65% of Minimum Wages fixed for NCT Delhi.

As per Exhibit-M-2 it is admitted fact that service provider had engaged 17 security guards and 2 Supervisors for the establishment of BPCL and both the employers agreed to pay wages to them as per DGR Guidelines. Therefore, as per Ext M-2 the 17 security guards and 2 security supervisors were entitled to get not less than 65% of Minimum wages fixed for NCT Delhi i.e.65% of Rs.3880 for Security Guards 65% of Rs.5158 and which comes to Rs.2522/- and Rs.3353/-respectively from the month of February 1996.

As per Exhibit W-5 the wages of those two category of workmen were revised w.e.f. February 1997 to Rs. 4128/- and to Rs. 5476/-respectively. In that case their wages ought to had been Rs.2,683/- per month and Rs.3,559/- respectively.

Similarly, exhibit w-6 shows, there was further revision in the wage structure of those security guards w.e.f. 01-02-1998. The wage of security guards was raised to Rs.4,515/- and that of Security Supervisor to Rs.5,983/-. Therefore, they were entitled to get not less than Rs.2,935/-per month and Rs. 3,889/-per month respectively w.e.f. 01-02-1998.

Ext W-1, the agreement of contract executed between two employers on 26.071996 and for a period from 18.05.1996 to 17.05.1998 show wages of security guard was fixed at Rs. 2171p.m. and Rs. 2836 p.m. for Security Supervisor.

Prima-facie it appears the contractor employer had quoted wages less than 65% of Minimum Wages Rate fixed by DGR for NCT Delhi w.e.f. February 1996. As per DGR Formula and Guidelines the wages of security guards and security supervisors should not had been less than Rs.2522/- and Rs.3353/-respectively.

Further, Ext.W-1 prove that it was agreed between the employers the workmen will be paid wages at revised rate as and when any upward revision was made by DGR and arrear too would be paid by the Principal Employer.

But Ext.W-2 prove there was no due compliance of the DGR Formula or guidelines in fixation of wage rate and as such there was a dispute between the contractor employer and its employee.

Nothing has come on record what steps were taken by the contractor employer with the Principal Employer for revision of wages as per DGR guidelines and formula or how much it paid to the workmen from February 1997 and February 1998 till its contract period was expired. Therefore, it can be assumed that those 19 workmen were never paid the wages as per DGR guidelines.

Similarly, nothing has come from the side of the Principal Employer to show indeed it paid wages to the contractor employees as DGR guidelines through its contractor. Therefore, it can be safely held that both the employers were engaged in unfair labour practice by paying them less than 65% of Minimum wages fixed for NCT Delhi. Since those security guards were engaged through a service provider to work in the establishment of BPCL. As per terms and conditions stipulated in the contract, it appears BPCL was ultimately liable to pay the legal wages to which those security guards were entitled as per DGR guidelines. But it stands prove that Principal Employer and its service provider had failed to adhere the DGR guidelines and thereby deprived the ex-servicemen of the wages to which they were legally entitled.

Therefore this Tribunal holds that 17 security guards and 2 Security Supervisors were entitled to wages per month in the following rates for the period from 18.05.1996 to 17.05.1998 :-

Period	Security Guards	Security Supervisor
From18-05-1996 to 31-01-1997	Rs.2,522/- p.m.	Rs.3353/- p.m.
From 01-02-1997 to 31-01-1998	Rs.2,683/- p.m.	Rs. 3,559/- p.,.
From 01-02-1998 to 17-05-1998	Rs.2,935/- p.m,.	Rs.3,889/- p.m.

BPCL is bound to pay the wages in the above rate to those 17 security Guards and 2 Security Supervisors during the period it has engaged M/s. Security and Vigilance Agency as its service provider and who had absorbed those security guards already working for it but under its previous service provider.

Union has been able to prove that BPCL had failed to pay the wages to 19 Security personnel it had engaged through contractor at the rate which was formulated by DGR during the period from 18-05-1996 to 17-05-1998 and they are entitled to get the arrear from BPCL

BPCL is hereby directed to pay the arrears of wages to those 19 workmen to which they were entitled within three months from the date hereof along with interest @12% per annum from the date of due till payment.

It is very pertinent to note that the union/workmen have stopped taking any step when the matter was ripened to the stage of argument and saw no further progress and development in the dispute espoused by then even after waiting for more than two decades. Since they have been successful in the battle fought by them for more than two decades but which they have abandoned before the declaration of the result, then a duty is cast upon this Tribunal to inform them result.

Therefore, office is directed to notify following persons about the award:-

(1) W.W.No1 Sri Asish Kumar Dolui, S/o. Sri/Late Banamali Dolui, Vill. Bangapara, P.O. Deulpota, Dist. East Midnapore

(2) W.W.No.2 Sri Kalkyan Das, S/o Late/Sri Laxmikanta Das, resident of CPT Contractors Colony, P.O. & P.S. Durgachak, Dist. East Midnapore and

(3) The General Secretary, Haldia Security Agency Staff Association, Shramik Bhaban, Chiranjibpur, Debhog, Haldia, Midnapore, West Bengal, by Speed Post by sending a copy of this award so that they can claim their legitimate due from the management of BPCL.

Accordingly, reference case no.16 of 2001 is allowed and award to that effect is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 17 अगस्त, 2023

का.आ. 1332.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ़ इंडिया के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (101/2003) प्रकाशित करती है।

[सं. एल L-12025/01/2023-आई आर (बी-I)-74]

सलोनी, उप निदेशक

New Delhi, the 17th August, 2023

S.O. 1332.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 101/2003) of the Cent.Govt.Indus.Tribunal-cum-Labour Court

Hyderabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workman.

[No. L-12025/01/2023-IR(B-I)-74]

SALONI, Dy. Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 3rd day of July, 2023

INDUSTRIAL DISPUTE No. 101/2003

Between:

Sri Ch. Paradesi,

S/o Ch. Israil,

Kankaraguta Post

Guntur Mandal

Guntur District. … Petitioner

And

1 The Chief Manager,
Personnel Section,
State Bank of India,
Zonal Office, Labbipet,
Vijayawada.

2. The General Manager,
State Bank of India,
Personnel Department,
Local Head Office, Bank Street,
Hyderabad. …..Respondents

Appearances:

For the Petitioner : Sri Suman, Advocate

For the Respondent: Sri Y. Ranjith Reddy, Advocate

AWARD

Sri Ch. Paradesi who worked as Messenger (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents State Bank of India seeking for reinstatement into service as Messenger/Sweeper duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deem fit.

2. Earlier this industrial dispute was answered by this Tribunal by a common award dated 17.5.2005, along with other batch cases, and the claim of the workman was dismissed. Workman challenged said award before the Hon'ble High Court vide WP No. 6470/2006 & batch wherein Hon'ble High Court of A.P., vide decision dated 23.6.2014 set aside the common award dated 17.5.2005 passed by Central Government Industrial Tribunal cum Labour Court, Hyderabad and directed the Respondent bank to reengage the workmen in the positions which they had been occupying prior to termination. Being aggrieved by the said order in WP No. 6470/2006 & batch, Respondent bank preferred appeal WA Nos.1268/2014 and batch cases wherein Division Bench of Hon'ble High Court held:-

"(1) affirming the impugned common order of the learned single Judge to the "extent it sets aside the common award dated 17.5.2005 of the Industrial Tribunal;

(2) The further findings and directions issued through the impugned common order are vacated;

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five(5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Hon'ble High Court of Andhra Pradesh in WA No.1268/2014 and other batch, held that, " *Hearing the learned senior counsel for the SBI and the Learned Senior Counsel for the contesting unofficial respondents, we see that while the learned single Judge was justified in setting aside the award of the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and the most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases HCJ&ARR,J WA No. 1268 of 2014 & Batch 6 have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal//The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited."*

Therefore, in compliance with order dated 20.3.2019 of Hon'ble High Court of A.P., Hyderabad passed in WA No.1268/2014, this Industrial Tribunal conducted hearing proceedings in this reference on an individual basis and both parties have been provided ample hearing opportunity during the proceeding.

The factual matrix of the present industrial dispute is as follows:

3. **The workman filed his claim statement with the averments in brief as follows**:

The petitioner, Sri Ch. Paradesi, was working as a Messenger in the State Bank of India since 1986. He worked until March, 1997 when he was stopped from working based on the orders of the respondent panels. The petitioner was called for an interview in 1989 and included in the panel in 1991. During the period from July, 1991 to March, 1997, he worked for a total number of 1060 days. Contempt petition was filed regarding the employment of temporary and casual workers as the petitioner was not considered for regular employment while his juniors were. In June, 1999, a stay order was obtained, preventing recruitment from taking place. As a result, the petitioner has crossed the age limit for recruitment and cannot seek alternate employment. The petitioner had previously worked from 1975 to 1991 but was denied employment by a blank order from the Regional Manager, Tirupati. A settlement in 1987 allowed those who had completed a minimum number of working days to be called for interviews. The petitioner was asked to work temporarily during this time. Multiple settlements were made without considering the petitioner's name for absorption into permanent employment. Panels were prepared concurrently, and the Branch Manager was directed not to engage temporary employees from July, 1997. Writ petitions were filed, and the Single Judge directed the State Bank of India to absorb the petitioner within six months. However, the respondent appealed to the Division Bench, which set aside the single judge's order and directed the petitioner to exhaust remedies under the Industrial Disputes Act. The petitioner claims that he is more senior compared to many of the people selected later who are still working. Despite the existence of branch vacancies, the petitioner was not considered for employment. The petitioner's services were abruptly stopped without any reason or following the procedure under the Industrial Disputes Act. It is submitted that the respondents have not exhausted the necessary procedures before retrenching the petitioner. The abrupt termination is seen as an unfair labour practice. The petitioner's name was included in a panel valid until December 1991, which was prepared after March 31, 1997. The petitioner claims a reasonable expectation of continuation in service. The petitioner submits that the respondent's actions constitute discrimination among equally qualified candidates, contrary to guidelines established by the Supreme Court. The petitioner believes that only empanelled candidates, including himself, should be appointed to temporary or permanent vacancies until they are absorbed. Previous settlements were not implemented as intended, and subsequent agreements were made without following the intention to give chances to empanelled candidates. The petitioner disputes the respondent's claim that the panel of temporary employees and casual labour expired on March 31, 1997, arguing that there is no specified authority to decide the validity or termination of the panel. The petitioner claims that since the illegal termination, alternative employment has not been secured by him despite best efforts. The petitioner requests the court to declare the respondent's termination of service as illegal, arbitrary, and unjust. He seek reinstatement with continuity of service, back wages, and other associated benefits deemed fit by the court.

4. The Respondents filed counter refuting the averments made by the Petitioner in the claim petition, and the contention of the Respondent in brief runs as follows:

The respondent submits that the claim petition is not valid and goes against the Industrial Disputes Act, 1947. They deny the allegations made in the claim statement and demand proof of those allegations. The respondent bank used to hire temporary subordinate staff to cope with staff shortages and government-imposed restrictions. The All India State Bank of India Staff Federation advocated for temporary employees with less than 240 days of service to be considered for permanent appointments. Discussions were held between the federation and the bank, leading to a settlement that aimed to provide fair treatment to temporary employees. The settlement includes various factors, some of which are relevant to the current application.

5. On 17.11.1987, an agreement was signed between the Federation and the management Bank under Section 2(p) read with Section 18(1) of the ID Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1967.

As per settlement the temporary employees were categorized into three categories, detailed as under:

i) Category 'A' :

Those, who have completed 240 days of temporary service in 12 calendar months or less after 01.07.1975.

ii) Category 'B':

Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

iii) Category 'c':

Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 01.07.1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

In the initial settlement, it was agreed that temporary employees would be given an opportunity for permanent appointments in the bank for vacancies expected to arise from 1987 to 1991. However, on July 16, 1988, a subsequent agreement was reached between the Federation and the bank, extending the consideration period for vacancies from 1987 to 1992. This agreement was signed under relevant sections of the Industrial Disputes Act and its associated rules, and it will be referred to as the second settlement.

6. Later, on October 27, 1988, another agreement, referred to as the third settlement, was reached between the Federation and the bank. It introduced a new clause, 1-A, after clause 1 in the initial settlement. This clause stated that individuals engaged on a casual basis to fill in for leave or casual vacancies in positions like messengers, farrashes, cash coolies, water boys, sweepers, etc., would also be considered for permanent appointments in the bank for vacancies expected to arise from 1988 to 1992. Therefore, not only temporary employees receiving scale wages but also casual or daily wagers would be eligible for permanent absorption into the bank.

7. Government of India vide its letter dated 16.8.1990 issued guidelines to all the public sector banks with regard to the absorption of temporary employees in public sector banks. The said guidelines were issued to implement along the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25F of the Industrial Disputes Act might be decided by entering into a settlement with the representative union. With respect to temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided, however, if the Management so desired they could enter into a conciliation settlement with the representative union. In para 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for consideration under the scheme. Although the Government guidelines envisaged a settlement in respect of temporary employees who had put in temporary service of 90 days or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

8. According to the settlement dated November 17, 1987, temporary employees who had worked with the bank from July 1, 1975, to December 31, 1987, were given an opportunity to be considered for permanent appointment against future vacancies. The eligible candidates were categorized into three groups based on their completed days of service: Category A (240 days), Category B (270 days), and Category C (70 days). The waitlisted candidates' panel would remain valid until December 31, 1991. Through a modification in the second settlement on July 16, 1988, the qualifying service date was extended to July 31, 1988, instead of December 31, 1987. An advertisement was issued on August 1, 1988, calling for applications from temporary employees who received scale wages, region-wise, to fill the vacancies in different regions.

9. The third settlement on October 27, 1988, was a result of the union's advocacy for casual or daily wage workers. It was decided to consider all candidates for vacancies likely to arise between 1988 and 1992. While the number of vacancies in some regions exceeded the waitlisted temporary employees, the Chennai circle was an exception as there were more waitlisted temporary candidates than available vacancies.

10. On January 9, 1991, the fourth settlement was reached, extending the validity of the panel from 1991 to 1994. After December 31, 1994, the remaining candidates on the panel would have no claim. Following the third settlement, the bank issued an advertisement on May 1, 1991, inviting applications from casual/daily wage workers for consideration for permanent appointment. This created concerns among temporary employees who felt threatened if a common list was created. However, if the casual daily wagers were placed at the end of the list, there would have been no cause for concern.

11. In response, the SBI Employees Union filed a writ petition (Writ Petition No.7872 of 1991) seeking relief to operate the waitlist based on the August 1, 1988, advertisement and not to operate any list based on the May 1, 1991, advertisement. An interim stay was granted regarding the latter aspect, which lasted for more than eight years until July 23, 1999. Consequently, no list of casual posts/daily wage workers could have been drawn up during this period, and the list of temporary employees should have been in operation. The writ petition was finally disposed of on July 23, 1999, by which time the relief sought in the petition would have been implemented.

12. The 5th settlement was arrived at on 30th July 1996 requiring the panel to be kept alive up to 31st March, 1997 and this was in respect of the vacancies which became available up to 31st December 1994.

13. The respondent submits that the petitioner has not worked for more days than those who have been absorbed into the vacancies as agreed upon. They deny the petitioner's claim of continuous years of work and state that the petitioner, who has worked for less than 240 days in a 12-month period from 1975 to 1988, has no right to seek absorption in the bank except under the settlements. The case of the petitioner has already been considered under several settlements, and therefore, all the provisions and terms of those settlements are binding on them. The respondent submits that the applicant and other ex-temporary employees do not have an independent right, and their claims are based solely on the settlements. The preparation and maintenance of panels are in compliance with the agreed terms of the settlements. The panels, including the applicant, have ceased to exist after the designated period, and the remaining candidates have no right or claim against the bank. The settlements explicitly stated that the panels would not be kept alive until all candidates were absorbed. The applicant is barred from questioning the validity of the settlements after accepting the benefits and empanelment. According to the settlement dated January 9, 1991, vacancies until December 1994 were to be filled based on seniority from the 1989 panel. After that, the panel lapsed, and the remaining candidates have no claim for permanent absorption. The same applies to the 1992 panel. The respondent submits that only the temporary service rendered from January 1, 1975, to July 31, 1988, is considered for permanent absorption, and days worked after that period are not counted since the panels had already lapsed. The bank never promised to absorb all candidates in the panel, as the advertisement clearly stated that candidates would be considered for absorption in vacancies until 1992. According to the respondent, the vacancies were identified and the ex-temporary employees in the panels were absorbed based on seniority, as per the settlements between the Federation and the management Bank. The respondent submits that mere empanelment does not guarantee absorption for the petitioners, and keeping the panels alive after March 31, 1997, goes against the settlements. The respondent submits that the settlements between the State Bank of India and the All India State Bank of India Staff Federation have the force of law and are binding on the parties. The petitioners themselves have acted upon the settlements by being on the panel, and therefore, they are bound by the terms of the settlements. The maintenance of panels is in line with the agreed terms of the settlements, and the Bank has strictly adhered to these terms. The present application is based solely on the settlements and not on any independent right or provision of the Industrial Disputes Act. The panels under the settlements had a specific time limit, and this term cannot be modified in any legal proceedings. Therefore, those temporary employees who could not be accommodated due to lack of vacancies have no further rights for regularization under the settlements or otherwise. The bank has fully complied with the settlements, and the mentioned circulars and letters were merely directives to discontinue the practice of engaging temporary employees, which was also a term of the settlements. It is submitted that some writs were filed by certain temporary employees who were also called for interview and empanelled. In writ petition No.12964/94, the Hon'ble High Court went into similar contentions in detail and the Learned Judge also referred to the settlements and subsequently held that the Petitioners therein were not entitled to any relief and the only relief they can claim is enforcement of settlements, if there is any right flowing from it or it has been violated. The relevant operative portion of the said judgement is as follows:

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not, at all the case of the petitioner that any of the terms of the settlement has been violated by the bank's management. If the Petitioner had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the Petitioner to claim any right which flows from the settlement between the union and the bank management. As already pointed out that it is not the grievance of the Petitioner that some right which has flown from the settlement in favour of the Petitioner has been denied by the bank management. Therefore, I domestic enquiry not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Petitioner. Writ petition fails and is accordingly dismissed. No costs."

The respondent submits that the settlements clearly state that the panels would cease to exist at the end of the designated period, and there would be no further temporary or casual recruitment. The relief sought by the applicant, if granted, would essentially make temporary employment permanent through a backdoor entry, which goes against the settlements, as well as Articles 14 and 16 of the Constitution. It would also deprive rightful claimants of their chances through proper recruitment procedures. The settlements were intended as a one-time measure to end the practice of temporary engagement, and the rights of the applicant were determined by these settlements. Therefore, there is no legitimate expectation or estoppel, as contractual rights arising from an industrial settlement take precedence. The bank did not make any statement or representation guaranteeing permanent appointment, as clearly stated in the advertisement issued pursuant to the first settlement, which outlined the process of being considered for permanent appointment and being wait-listed based on suitability and subject to vacancies, with the waitlist valid until 1991.

14. The ex-temporary employees in the panels filed a writ petition before the High Court of Andhra Pradesh, which was initially allowed by the Single Judge. However, the bank appealed this decision, and the Division Bench of the High Court set aside the Single Judge's order. The ex-temporary employees then filed a Special Leave Petition before the Supreme Court, which was also dismissed. Therefore, the reference to the Single Judge's judgment in the writ petition is irrelevant, as it has been overturned. The petitioner has not worked for the required 240 days in any preceding 12-month period, so the reference to Section 25F of the Industrial Disputes Act is not relevant. The petitioners' claim regarding their service and educational qualifications require strict proof. The allegation of termination is incorrect, as the vacancies were filled based on seniority, and the non-engagement of the petitioner does not constitute termination. Temporary employees are subject to the availability of work, and there is no obligation to continue their employment when there is no work. The bank has not engaged in unfair labour practices, and the settlements are binding on the petitioner, having been fully implemented without violating any provisions of the Industrial Disputes Act. The issue has been addressed in various judgments of the Supreme Court and High Courts, and the petitioner's industrial dispute lacks merit and should be dismissed.

15. The Petitioner in support of his claim examined himself as WW1 and also filed photocopies of 15 documents which were marked as Ex.W1 to W15. Ex.W1 is the news paper advertisement, Ex.W2 is 1st panel list, Ex.W3 to W9 are service certificates, Ex.W10 is circular regarding lapse of panel, Ex.W11 is news paper advertisement, Ex.W12 is 2nd panel list, Ex.W13 is Transfer certificate of School, Ex.W14 is caste certificate of WW1 and Ex.W15 is employment registration certificate. On the other hand, Respondent filed photocopies of 12 documents which were marked as Ex.M1 to M12. Ex.M1 to M4 are settlements between Respondent and All India State Bank of India Staff Federation. Ex.M5 is conciliation proceedings. Ex.M6 is another settlement. Ex.M7 is Memorandum of understanding. Ex.M8 is statement giving the particulars of 1989 messenger panel. Ex.M9 is statement of 1989 non-messenger panel. Ex.M10 is statement of 1992 panel. Ex.M11 is order of Hon'ble High Court in WA No.86/98 and Ex.M12 is order in SLP No.11886-11888.

16. On the basis of the pleadings and the submissions made by the parties, following points emerge for determination:-

I. Whether the action of the Respondent Management in terminating the services of the workman, w.e.f, 31.03.1997 is legal and justified?

II. Whether the workman in terms of settlements arrived at between the Respondent Bank Management and the Federation of Employees is entitled for regularization absorption in the service of Bank?

III. To what relief, the workman is entitled for?

Findings:

17. **Points No. I & II**:- The workman claims that he had been working with the Respondent Bank since 1986 on temporary basis. In the year 1988, Respondent No. 2 issued advertisement for calling applications from the then temporary subordinate employees for the post of messenger. The workman moved application and he received interview call letter dated 12.07.1989 from bank to attend the interview on 25.07.1989 workman attended interview and Respondent Bank prepared an panel List of all the successful candidates in the year 1991 and the Petitioner's name appeared also in the panel list. The Respondent Bank utilized the services of the empanelled employees and workman on temporary basis till March 1997 and some of the empanelled employees were given permanent appointment basing on the number of days of service put up by them. Thereafter, the Respondent No.2 issued a Letter dated 25.03.1997 directing all Branch Managers not to utilize the services of the empanelled Messenger and to declare that the panel list of 1991 will lapse by 31.03.1997. Therefore, all the remaining empanelled employees as per the panel list of 1999, were denied employment after 31.03.1997. It is further submitted by the workman that Respondent No. 2 issued another advertisement in the year 1991 calling application for interview from the then temporary working messengers and selected some of the candidates among the applicants and prepared another panel list of 80 employees. The said panels lapsed in March 1997. However, surprisingly all the temporary employees as per Second panel List of 1993 were given permanent appointment and that order was issued just 15 days before the lapse of the panel List. It is further submitted that the empanelled employees of Second panel List of 1993 were

juniors to the temporary employees' of first panel list of 1991 in terms of number of days of service put up by them. Therefore, the act of Respondent Bank appointing the junior employees of second panel list ignoring the senior employees of the first panel list of 1991 is discriminatory, arbitrary and illegal which goes to indicated that the Respondent Bank chose to favour the employees of second panel List of 1993 for the reason best known to the Respondent Bank.

18. On the other hand, the Respondent countered the allegations made by the workman and submitted that the persons who do not have the requisite number of days of service as per the settlement, could not be considered for permanent absorption. It is contended that the bank had never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that the candidate will be considered for the absorption in the vacancies that may arise up to 1992. Since the panel list had already lapsed on 31.03.1997, and the vacancies were already filled up by absorbing the temporary attendants and daily wagers/casual employees respectively in order of their seniority in the empanelment, therefore, the consideration of engaging their services including workman could not have arise. Therefore, panel list of daily wagers prepared in the year 1992 was used for filling vacancies which arose up to end of 1994 and the said panel list automatically lapsed after the filling of the aforesaid vacancies.

19. In support of his claim, the workman has examined himself as WW1 and in chief examination, he reiterated his claim as made in his petition. Further he stated that Ex. W2 is the document referred List of empanelment Ex. W3-W9 are service certificates according to which the workman has worked for total number of 1060 days. In cross examination, WW1 states that he was not given any posting order at the time of joining the service nor at any other time. On the oral instruction of Branch Manager, he worked in the Branch. Further, he admits that in the panel list released by the management on 18.02.1993, his name was not a part of the list and that he did not work continuously for 240 days in any year of service. He further states that he is not aware of any settlements between the Management and the Union. On the other hand, the Respondent has examined MW1 and in his chief examination the witness had stated that the petitioner was included in the panel list 1989 however, as the existing vacancies at that time were exhausted, his turn didn't come, and he could not be given permanent employment in the bank. All the appointments were made strictly in accordance with the settlement between the SBI management and the SBI Staff Federation. The witness has also stated that as per the seniority was determined on the basis of number of days as temporary service put in by the employee in the given period and all the appointments were made as per seniority. Witness states that the petitioner had not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were not terminated from service by the Bank. The vacancies were filled up on regular basis with the temporary employees from the panel list and which were expired in terms of settlement on 31.03.1997 and there were no vacancies to absorb rest of the empanelled employees.

20. In view of the above statement of witness, it manifests that, the workman did not work for 240 days continuously in any year in the service. Therefore, the protection of the provisions under Section 25 (f) of Industrial Disputes Act, 1947 against the retrenchment is not available to the workman. The initial burden of proof was on the workman to show that he had completed 240 days of continuous service in the employment of bank from the date just preceding date of termination, but he failed to discharge his burden of proof.

In the case of **Mohan Lal v. Management BEL 1981 SCC 225, the Hon'ble Apex Court have held that**:

"Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act. he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."

"Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"

Therefore, in view of the above law, the claim of the workman that Respondent has not exhausted procedure before his retrenchment from service is not tenable.

21. Further, the workman claimed that his name was included in the empanelment of 1991 for regularization on temporary posts, but he was not regularized in the service and the temporary employees junior to him in service were appointed on permanent posts from the empanelment of 1993. However, WW1 in cross-examinations has admitted that he was not sponsored by the Employment Exchange. He could not indicate any instance of regularizing the temporary employee from the panel list of 1991, junior to him. Since, as per settlements arrived at between the Federation of Bank Employees and Respondent Bank Management, the vacancies for the empanelled employees of 1991 were available which would arise upto December, 1994 and those vacancies were absorbed from the panel list

1991 in order of seniority. Therefore, due to non-availability of the vacancies, and the workman not having the requisite number of days in service, and also workman being junior to other workmen in the panel, could not be granted regularization/absorption as a permanent employee in the Bank. It is admitted by the workman that the panel list was prepared in terms of settlement arrived at between the State Bank Management and Federation of State Bank Management Employees Association and the same is binding on both parties under Section 18 (1) of the Industrial Disputes Act. Therefore, in view of the above, settlements and awards are binding on the parties to the agreement.

In the case of **National Engineers Industries v. St. of Rajasthan Civil Appeal No. 16832/1996 dated 01.12.1999, three judges bench of Hon'ble Apex Court have held**:-

"In Ram Pukar Singh and Ors. Vs. Heavy Engineering Corporation and Qrs. [1994] 6 SCC 145 this Court said that a settlement arrived at between the management and the sole recognised union of workmen under section 12(3) read with section 18 of the Act would be binding on all the workmen whether members of the union or not."

Therefore, mere empanelment of the named workman, in the list for regularization, does not entitled him for absorption in the Bank's service as a permanent employee. As per the settlement, the panel lists expired on 31.03.1997, and thereafter, the life of the panel list could not be extended. In the Writ Petition No. 12964/1994, the Hon'ble High Court observed:-

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not at all the case of the petitioner that any of the terms of the settlement has been violated by the Bank's Management. If the petitioner had worked in the Bank on Part-time basis before 31.5.94, that itself would not vest in his a right to claim that his services should be regularised on permanent basis against a full time cadre post. The claim put forth by the petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the petitioner to claim any right which flows from the settlement between the union and the Bank Management. As already pointed out that it is not the grievance of the petitioner that some right which has flown from the settlement in favour of the petitioner has been denied by the Bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the petitioner. Writ Petition fails and is accordingly dismissed. No costs."

Therefore, the claim of workman in the present matter can not be considered beyond the terms and conditions of aforesaid settlement between Bank Management and Federation of employees.

Further, in the case **of State of U.P. v. Harish Chandra AIR 1996 SC 2173, the Hon'ble Apex Court have held**:-

"Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule, the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which in contrary to law. This being the position and in view of the Statutory rule contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist."

Similarly in the case of **Syndicate Bank and other Vs. Shankar Paul AIR 1997 SC 3091, it was held** :

"Temporary were made from the empanel of eligible candidates prepared by calling names from employment exchange, the empanel was valid for only year. When the said employee claimed permanent absorption in service, the Apex Court has held that, whatever conditions regarding these empanelled candidates had they come an end on the expiry of one year."

In the present matter also, since the panel list 1991, which was prepared for the vacancies arising up to December 1994, expired on 31.03.1997, and it could be extended after the said expiry date and moreover, the panel list exhausted from the vacancies available upto 1994 with the absorption of empanelled senior employees. Thus, the workman being junior in that panel list could not get regularization / absorption in the service. Therefore, the workman failed to prove his claim as alleged in his petition.

Points No. I & II is answered accordingly.

22. Point No. III:-

In view of the findings given in Points No. I & II, the claim of the workman for regularization in the service of Respondent Bank is unfounded and devoid of merits. Therefore, the workman is not entitled for any relief of

reinstatement or regularization in the employment of Respondent Bank. Hence, his claim petition is liable to be dismissed.

ORDER

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri Ch. Paradesi, is legal and justified. Hence, the Petitioner is not entitled for any relief as prayed for and consequently petition stands dismissed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 3rd day of July, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Ch. Paradesi	MW1: Sri Alluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of News paper advertisement
Ex.W2:	Photocopy of 1st panel list
Ex.W3:	Photocopy of service certificate dt. nil
Ex.W4:	Photocopy of service certificate dt. 8.8.88
Ex.W5:	Photocopy of service certificate dt. 14.12.89
Ex.W6:	Photocopy of service certificate dt. 1.6.91
Ex.W7:	Photocopy of service certificate dt. 1.8.92
Ex.W8:	Photocopy of service certificate dt. 29.7.95
Ex.W9:	Photocopy of service certificate dt. 14.2.98
Ex.W10:	Photocopy of Panel lapsed circular dt.25.3.1997
Ex.W11:	Photocopy of news paper advertisement
Ex.W12:	Photocopy of 2nd panel list
Ex.W13:	Photocopy of Transfer Certificate of school DT.17.7.84
Ex.W14:	Photocopy of caste certificate of WW1
Ex.W15:	Photocopy of employment registration certificate dt.18.6.83

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997

Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.

Ex.M9: Photocopy of statement of 1989 Non0messenger panel

Ex.M10: Photocopy of statement of 1992 panel

Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98

Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 17 अगस्त, 2023

का.आ. 1333.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ़ इंडिया के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (15/2001) प्रकाशित करती है।

[सं. एल-L-12012/294/2000-आईआर(बी-I)]

सलोनी, उप निदेशक

New Delhi, the 17th August, 2023

S.O. 1333.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 15/2001) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workman.

[No. L-12012/294/2000-IR(B-I)]

SALONI, Dy. Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 25th day of July, 2023

INDUSTRIAL DISPUTE No. 15/2001

Between:

Sri M. Seshagiri Rao,

S/o Nagendrudu,

8th ward, Avanigadda

Krishna District. … Petitioner

And

The Assistant General Manager,

State Bank of India,

Zonal Office, RG-II,

Labbipet,

Vijayawada -520 004. …..Respondent

Appearances:

For the Petitioner : Sri Suman, Advocate

For the Respondent: Sri Y. Ranjith Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/294/2000-IR(B.I) dated 19.4.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

THE SCHEDULE

"Whether the action of the management of State Bank of India, Vijayawada Zone in dismissing services of Shri M. Seshagiri Rao, Ex.Messenger, by way of oral orders w.e.f. 31.3.1997 is justified? If not, what relief the workman is entitled?"

After receipt of the reference, it was numbered as ID 15/2001 and notices were issued to both the workman and the management.

2. Earlier this reference was answered by this Tribunal by a common award dated 17.5.2005, along with other batch cases, and the claim of the workman was dismissed. Workman challenged said award before the Hon'ble High Court vide WP No. 6470/2006 & batch wherein Hon'ble High Court of A.P., vide decision dated 23.6.2014 set aside the common award dated 17.5.2005 passed by Central Government Industrial Tribunal cum Labour Court, Hyderabad and directed the Respondent bank to reengage the workmen in the positions which they had been occupying prior to termination. Being aggrieved by the said order in WP No. 6470/2006 & batch, Respondent bank preferred appeal WA Nos.1268/2014 and batch cases wherein Division Bench of Hon'ble High Court held:-

"(1) affirming the impugned common order of the learned single Judge to the "extent it sets aside the common award dated 17.5.2005 of the Industrial Tribunal;

(2) The further findings and directions issued through the impugned common order are vacated;

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five(5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Hon'ble High Court of Andhra Pradesh in WA No.1268/2014 and other batch, held that, " *Hearing the learned senior counsel for the SBI and the Learned Senior Counsel for the contesting unofficial respondents, we see that while the learned single Judge was justified in setting aside the award of the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and the most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases HCJ&ARR,J WA No. 1268 of 2014 & Batch 6 have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal//The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited."*

Therefore, in compliance with order dated 20.3.2019 of Hon'ble High Court of A.P., Hyderabad passed in WA No.1268/2014, this Industrial Tribunal conducted hearing proceedings in this reference on an individual basis and both parties have been provided ample hearing opportunity during the proceeding.

The factual matrix of the present industrial dispute is as follows:

3. **The workman filed his claim statement with the averments in brief as follows**:

The petitioner, Sri M. Seshagiri Rao, was working as a Messenger in the State Bank of India since 1985. He worked until 1.4.1997 when he was stopped from working based on the orders of the respondent panels the Petitioner belongs to Scheduled Caste. It is submitted that the workman joined in the services of the Management Institution as Messenger on 1985 to rendered unblemished service spreading over a period of about 5 years, and by dint of hard work till his services were terminated by oral orders w.e.f. 1.4.1997. It is submitted that the Management of Bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment " by wait-listing them, by offering permanent appointment or wait-listing till such opportunity arises. It is submitted that on 17.11.1987 a Settlement was reached between All India State Bank of India Staff Federation and the Management of Bank Settlement-1. Under this Settlement, three categories of employees were listed - (a) Those who have completed 240 days in 12 months or less after 1.7.1975; (b) Those who have completed 270.days in any continuous block of 36 calendar months after 1.7.1975; and (c) Those who have completed minimum of 30 days aggregate in a continuous, block of 12 calendar months after I.7.1975. Persons who satisfy any of the above three categories were to be interviewed by a Selection Committee. The said Selection Committee determine suitability of the said candidate for

permanent appointment. Therefore, the bank first had opportunity to notice and observe the work of the workmen, then prescribed certain qualification and from among the candidates satisfying the qualifications. The suitable candidates were enlisted by a Selection Committee Clause (7) of the said agreement provided that the selected candidates would be waitlisted in order of their respective categorization and the select panel he valid upto December 1991 Clause (10) of the Settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the Bank". Clause (1) of the agreement excluded categorized persons who are ineligible. The workman further submitted that consequent upon the said agreement and the Draft, a Notification was issued in the Newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May 1989 was held. A select panel was prepared. As per clause (7) of the Agreement (Settlement-I) the select panel was to be valid up till December, 1991. It was however, given currency and renewed upto 1997. However, this did not put to an end the legitimate claims of various persons like the workman. It is submitted that the Government of India issued Circular No. F-3/3/104/87-IR, dated l6.8.1990. By and under the said Circular, the Chief Executives of all Public Sector Banks including the management were specifically instructed that until the problem of existing temporary employees is fully resolved, no Bank be permitted to make any temporary appointments. The workman further submits that some of the persons similarly situated like the workman aggrieved by the inaction on the part of the Management Bank in not regularizing their services from out of the select panel and not clearly focusing the vacancy position, filed W.P.No. 4194/97 on the file of the Hon'ble High Court of Andhra Pradesh. It is specifically averred in the said writ petition that the management of the Bank had failed to implement the Settlement and that it violates the various Fundamental rights guaranteed under the Constitution of India. The Hon'ble High Court by an order dated 5.3. 1997 directed the Bank to implement the Settlement as amended from time to time. It also directed the Bank to carry out the terms of the Settlement before the expiry of March, 1997. The High Court also recorded a finding that the Bank cannot escape its liability of enforcement of the settlement. In view of the directions granted by the High Court in W.P. No. 4194/97 all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.1987 under which the panel was valid upto December, 1991 and on the basis of a Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December. 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the directions given by the High Court on 5.3.1997 in WP No 4194/97 and contrary to the settlements entered into between the parties. The Bank issued proceedings dated 25.3.1997, 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the Bank from 1.4.1997. The said order was followed by the Management. Aggrieved by the said action the workman and similarly situated candidates have filed a writ petition before the Hon'ble High Court by way of writ petition No 9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (respondents No.3, 4 and 5) on 25.3.1997. 27.3.1997 and 31.3.1997 as illegal and also non-continuance of the petitioners service by absorbing them in the services of the Bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the Bank to absorb them in service. The workman further submits that in the counter affidavit filed in the writ petition No. 9206/97, the Bank submitted that it has about 805 Branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its Banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent needs or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the Bank either on the ground of urgent need or of temporary employees is a facade to perpetuate unfair labour practice. It is designed to, on the one hand, keep the employees in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the Bank. A reading of the counter affidavit would show that the Bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice. It is further submitted that the Bank refers in its counter affidavit to three Settlements dated 17.11.1987, 16.7.1988 and 27. 10.1988. The Bank in the guise of extending the benefits of the circular of Government dated l6.8.1990 stated in its counter affidavit as follows:

"*Government of India. vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment aha absorption of temporary employees in public sector bunks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.*

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the management so desired, they could enter into a conciliation settlement with the

representative union. In para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1.1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

As such, it could be seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6 (c) that the Banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the Bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para (k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement would mean that the Government of India guide lines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

It is submitted that clause (10) of the Settlement it is specifically mentioned that the workmen to be absorbed or appointed in the Bank prohibiting any temporary appointments subsequent to the date of settlement. Even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed cither for temporary vacancy or permanent vacancy except from among the empanelled candidates like the workman and that should be continued till they are absorbed. It is submitted that the respondent Management has indulged in unfair labour practices. The said practice is evident from the actions of the Management Bank. In case of similarly situated workmen like Ch. Survanarayana. B. Venkateswarlu and P. Hussain Saheb who are empanelled by an order dated 3.9.1994 with a direction that their services to be on a very restricted basis against temporary vacancies for not more than 200 days in any continuous block of 12 months so as not to give them statutory right. The caption for such selections has been brought to attention that it was for absorption of temporary employees. That is how the panels for absorption were prepared according to each category 'A', ' B' and 'C'. In view of the regularization of the workmen who served the Bank ranging between 30 days and above has a right for absorption. The same is evident from the proceedings issued by the Management wherein they have specifically mentioned that their cases will be considered for absorption as and when the vacancies arose, till such time they shall be continued on temporary basis. Contrary to the said proceedings, now the Management indulged in unfair labour practices and terminated the service of similarly situated candidates like the workman with effect from 1.4.1997. Hence. the said practice of the Management is highly arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India. It is submitted that the workman and other similarly situated workmen who are working as on 31.3.1997 were orally asked not to come to duty from I.4.1997. In para 3 of the proceedings dated 27.3.1997 it is stated that the panels of temporary employees on daily wages/casual labour maintained by Zonal Offices stand lapsed by 31.3.1997 and reads as follows:

"3. The panels of temporary employees and daily wagers casual labour maintained by Zonal Offices stand lapsed by 31.3. 1997. Please confirm by return of post that the above instructions are meticulously complied with at your branch w.e.f 1.4.1997. Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that now onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed. This is very important and should be meticulously followed/implemented invariably without fail":

It is submitted that there is no indication in any of the settlements as to who is the competent authority to decide about the validity or the life of the panels or to put an end to it and the so-called DGM is not stated to be the competent authority. It is submitted that the first settlement fixed the validity of the panels till 31.12. 1991 never used the word that it is going to be lapsed on 1.1.1992. Similarly when the validity was extended in the subsequent settlements to be operated at least till 31.3.1997. Sometimes even without the extension of the panels would lapse after 31.3.1997, it is strange as to how the so-called competent authority or the authorities of the bank thought or decided to lapse them from 1.4.1997. It is submitted that the balance of unabsorbed candidates like the workman and the similarly situated candidates cannot more than 10% of the total empanelled candidates. Therefore, unless the Bank is able to demonstrate that the balance of unabsorbed candidates as on 31.3.1997 was only 10% of the total empanelled candidates, the theory of the lists becoming lapsed leaving no scope for absorption becomes an ingenious theory. It can be shown out of 6,932 empanelled candidates. 3,178 were not absorbed and it should have been more than 10%. It is submitted that though an empanelled list was pending for absorption of such candidates on the date of first settlement, new lists of empanelled candidates in three categories were prepared by virtue of the subsequent settlements which were sought to be implemented with all seriousness. Although such panels could not be fully

exhausted by the date of the last settlement dated 26.4.1991, the existing panels were enlarged by allowing others also to join such panels with supplementary panels to be used after the earlier panels of temporary employees have been exhausted. This will only mean that the bank was capable of absorbing all the cand1dates in the panels which were in existence as on 26.4. 1991. It is submitted that the Banks were directed that recruitment of all temporary employees in the Clerical or Subord1inate cadres shall be stopped forthwith. In pursuance of such directions an advertisement was issued in the local Newspapers as per the settlements and based upon that panels were prepared after an interview. Two salient features of the instructions of the Government are that there must be one tine and whole time settlement to consider the absorption of such temporary employees in the existing panels and till then no Bank will be permitted to make any temporary appointment. It is submitted that the action of termination such employees like the workman by virtue of impugned proceedings without implementing the settlements would be illegal and it would be denial of unfair labour practice within the meaning of Section 2(a) of Industrial Disputes Act which cannot be allowed to be perpetuated. It is submitted that discontinuance of workmen after 31.3.1997 to serve in the Bank in any capacity amounts to retrenchment. It could not have done without notice and it violates Section 25(ff) of I.D. Act and the said action is violative of principles of natural justice guaranteed under Chapter-III of the Constitution of India. Therefore, the action of D.G.M. the so-called competent authority who has passed the impugned proceedings amounts to retrenchment of the workman without one month's notice or payment in lieu of such notice, wages for the period of notice. Thus the impugned proceedings are issued in colourable exercise of power, without jurisdiction, arbitrary, illegal and are therefore liable to be quashed. The workman submits that though the respondent management informed in its letter dated 10.10.1990, the Central Government stating that they are implementing the instructions issued in proceedings dated I6.8.1990. In fact the management failed to implement the same for the reasons best known to them. It is further submitted that the M.O.U. dated 27.2.1997 said to have been entered into between the parties does not binds the workmen as it has no legal entity. However, the said M.O.U. has not published anywhere to brought to the notice of the workmen whose rights are being affected. In fact, when settlements were arrived at in the year 1987, the Central Government directed the respondent management to give vide publicity by its letter dated 30.11.1987 and 29.12.1987. Accordingly those settlements were brought to the notice of workmen by way of advertisement. The said process was not followed while entering into M.O.U. dated 27.2.1997, through which the affected parties like the workman was kept in dark about the lapse of the selected panels. It is further submitted that the management has failed to implement the selected, panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993, a copy of the same is filed in the material papers and the same may be read as part of the Claim Petition. It is submitted that the management adhere to the procedure envisaged by the Central Government in its instructions dated 16.8.1990 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment Exchange instead of giving chance to the empanelled candidates like the workman herein. It is pertinent to mention here that the respondent management sent call letters to the similarly situated candidates like the workman in the month of June. 1997, subsequent to the passing of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, copies of call letters issued are filed herein along with Claim Petition. The workman reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the respondent management to engage the empanelled candidates like the workman even in temporary vacancies till they are absorbed permanently in regular vacancies. The workman submitted that ever since the date of his removal from service, he remained unemployee, as he could not secure any alternative employment inspite of his best efforts. Thus, the action of the respondent Management in terminating the services of the workman by oral order with effect from 31.3.1997 is unjust, illegal, opposed to principles of natural justice besides being violative of various provisions of I.D. Act and the same is liable to be set aside.

4. The Respondents filed counter refuting the averments made by the Petitioner in the claim petition, and the contention of the Respondent in brief runs as follows:

The respondent submits that the claim petition is not valid and goes against the Industrial Disputes Act, 1947. They deny the allegations made in the claim statement and demand proof of those allegations. The respondent bank used to hire temporary subordinate staff to cope with staff shortages and government-imposed restrictions. The All India State Bank of India Staff Federation advocated for temporary employees with less than 240 days of service to be considered for permanent appointments. Discussions were held between the federation and the bank, leading to a settlement that aimed to provide fair treatment to temporary employees. The settlement includes various factors, some of which are relevant to the current application.

5. On 17.11.1987, an agreement was signed between the Federation and the management Bank under Section 2(p) read with Section 18(1) of the ID Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1967.

As per settlement the temporary employees were categorized into three categories, detailed as under:

i) Category 'A' :

Those, who have completed 240 days of temporary service in 12 calendar months or less after 01.07.1975.

ii) Category 'B':

Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

iii) Category 'c':

Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 01.07.1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

In the initial settlement, it was agreed that temporary employees would be given an opportunity for permanent appointments in the bank for vacancies expected to arise from 1987 to 1991. However, on July 16, 1988, a subsequent agreement was reached between the Federation and the bank, extending the consideration period for vacancies from 1987 to 1992. This agreement was signed under relevant sections of the Industrial Disputes Act and its associated rules, and it will be referred to as the second settlement.

6. Later, on October 27, 1988, another agreement, referred to as the third settlement, was reached between the Federation and the bank. It introduced a new clause, 1-A, after clause 1 in the initial settlement. This clause stated that individuals engaged on a casual basis to fill in for leave or casual vacancies in positions like messengers, farrashes, cash coolies, water boys, sweepers, etc., would also be considered for permanent appointments in the bank for vacancies expected to arise from 1988 to 1992. Therefore, not only temporary employees receiving scale wages but also casual or daily wagers would be eligible for permanent absorption into the bank.

7. Government of India vide its letter dated 16.8.1990 issued guidelines to all the public sector banks with regard to the absorption of temporary employees in public sector banks. The said guidelines were issued to implement along the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25F of the Industrial Disputes Act might be decided by entering into a settlement with the representative union. With respect to temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided, however, if the Management so desired they could enter into a conciliation settlement with the representative union. In para 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for consideration under the scheme. Although the Government guidelines envisaged a settlement in respect of temporary employees who had put in temporary service of 90 days or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

8. According to the settlement dated November 17, 1987, temporary employees who had worked with the bank from July 1, 1975, to December 31, 1987, were given an opportunity to be considered for permanent appointment against future vacancies. The eligible candidates were categorized into three groups based on their completed days of service: Category A (240 days), Category B (270 days), and Category C (70 days). The waitlisted candidates' panel would remain valid until December 31, 1991. Through a modification in the second settlement on July 16, 1988, the qualifying service date was extended to July 31, 1988, instead of December 31, 1987. An advertisement was issued on August 1, 1988, calling for applications from temporary employees who received scale wages, region-wise, to fill the vacancies in different regions.

9. The third settlement on October 27, 1988, was a result of the union's advocacy for casual or daily wage workers. It was decided to consider all candidates for vacancies likely to arise between 1988 and 1992. While the number of vacancies in some regions exceeded the waitlisted temporary employees, the Chennai circle was an exception as there were more waitlisted temporary candidates than available vacancies.

10. On January 9, 1991, the fourth settlement was reached, extending the validity of the panel from 1991 to 1994. After December 31, 1994, the remaining candidates on the panel would have no claim. Following the third settlement, the bank issued an advertisement on May 1, 1991, inviting applications from casual/daily wage workers for consideration for permanent appointment. This created concerns among temporary employees who felt threatened if a common list was created. However, if the casual daily wagers were placed at the end of the list, there would have been no cause for concern.

11. In response, the SBI Employees Union filed a writ petition (Writ Petition No.7872 of 1991) seeking relief to operate the waitlist based on the August 1, 1988, advertisement and not to operate any list based on the May 1, 1991, advertisement. An interim stay was granted regarding the latter aspect, which lasted for more than eight years until July 23, 1999. Consequently, no list of casual posts/daily wage workers could have been drawn up during this period, and the list of temporary employees should have been in operation. The writ petition was finally disposed of on July 23, 1999, by which time the relief sought in the petition would have been implemented.

12. The 5th settlement was arrived at on 30th July 1996 requiring the panel to be kept alive up to 31st March, 1997 and this was in respect of the vacancies which became available up to 31st December 1994.

13. The respondent submits that the petitioner has not worked for more days than those who have been absorbed into the vacancies as agreed upon. They deny the petitioner's claim of continuous years of work and state that the petitioner, who has worked for less than 240 days in a 12-month period from 1975 to 1988, has no right to seek absorption in the bank except under the settlements. The case of the petitioner has already been considered under several settlements, and therefore, all the provisions and terms of those settlements are binding on them. The respondent submits that the applicant and other ex-temporary employees do not have an independent right, and their claims are based solely on the settlements. The preparation and maintenance of panels are in compliance with the agreed terms of the settlements. The panels, including the applicant, have ceased to exist after the designated period, and the remaining candidates have no right or claim against the bank. The settlements explicitly stated that the panels would not be kept alive until all candidates were absorbed. The applicant is barred from questioning the validity of the settlements after accepting the benefits and empanelment. According to the settlement dated January 9, 1991, vacancies until December 1994 were to be filled based on seniority from the 1989 panel. After that, the panel lapsed, and the remaining candidates have no claim for permanent absorption. The same applies to the 1992 panel. The respondent submits that only the temporary service rendered from January 1, 1975, to July 31, 1988, is considered for permanent absorption, and days worked after that period are not counted since the panels had already lapsed. The bank never promised to absorb all candidates in the panel, as the advertisement clearly stated that candidates would be considered for absorption in vacancies until 1992. According to the respondent, the vacancies were identified and the ex-temporary employees in the panels were absorbed based on seniority, as per the settlements between the Federation and the management Bank. The respondent submits that mere empanelment does not guarantee absorption for the petitioners, and keeping the panels alive after March 31, 1997, goes against the settlements. The respondent submits that the settlements between the State Bank of India and the All India State Bank of India Staff Federation have the force of law and are binding on the parties. The petitioners themselves have acted upon the settlements by being on the panel, and therefore, they are bound by the terms of the settlements. The maintenance of panels is in line with the agreed terms of the settlements, and the Bank has strictly adhered to these terms. The present application is based solely on the settlements and not on any independent right or provision of the Industrial Disputes Act. The panels under the settlements had a specific time limit, and this term cannot be modified in any legal proceedings. Therefore, those temporary employees who could not be accommodated due to lack of vacancies have no further rights for regularization under the settlements or otherwise. The bank has fully complied with the settlements, and the mentioned circulars and letters were merely directives to discontinue the practice of engaging temporary employees, which was also a term of the settlements. It is submitted that some writs were filed by certain temporary employees who were also called for interview and empanelled. In writ petition No.12964/94, the Hon'ble High Court went into similar contentions in detail and the Learned Judge also referred to the settlements and subsequently held that the Petitioners therein were not entitled to any relief and the only relief they can claim is enforcement of settlements, if there is any right flowing from it or it has been violated. The relevant operative portion of the said judgement is as follows:

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not, at all the case of the petitioner that any of the terms of the settlement has been violated by the bank's management. If the Petitioner had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the Petitioner to claim any right which flows from the settlement between the union and the bank management. As already pointed out that it is not the grievance of the Petitioner that some right which has flown from the settlement in favour of the Petitioner has been denied by the bank management. Therefore, I domestic enquiry not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Petitioner. Writ petition fails and is accordingly dismissed. No costs."

The respondent submits that the settlements clearly state that the panels would cease to exist at the end of the designated period, and there would be no further temporary or casual recruitment. The relief sought by the applicant, if granted, would essentially make temporary employment permanent through a backdoor entry, which goes against the settlements, as well as Articles 14 and 16 of the Constitution. It would also deprive rightful claimants of their chances through proper recruitment procedures. The settlements were intended as a one-time measure to end the practice of temporary engagement, and the rights of the applicant were determined by these settlements. Therefore, there is no legitimate expectation or estoppel, as contractual rights arising from an industrial settlement take precedence. The bank did not make any statement or representation guaranteeing permanent appointment, as clearly stated in the advertisement issued pursuant to the first settlement, which outlined the process of being considered for permanent appointment and being wait-listed based on suitability and subject to vacancies, with the waitlist valid until 1991.

14. The ex-temporary employees in the panels filed a writ petition before the High Court of Andhra Pradesh, which was initially allowed by the Single Judge. However, the bank appealed this decision, and the Division Bench of the High Court set aside the Single Judge's order. The ex-temporary employees then filed a Special Leave Petition

before the Supreme Court, which was also dismissed. Therefore, the reference to the Single Judge's judgment in the writ petition is irrelevant, as it has been overturned. The petitioner has not worked for the required 240 days in any preceding 12-month period, so the reference to Section 25F of the Industrial Disputes Act is not relevant. The petitioners' claim regarding their service and educational qualifications require strict proof. The allegation of termination is incorrect, as the vacancies were filled based on seniority, and the non-engagement of the petitioner does not constitute termination. Temporary employees are subject to the availability of work, and there is no obligation to continue their employment when there is no work. The bank has not engaged in unfair labour practices, and the settlements are binding on the petitioner, having been fully implemented without violating any provisions of the Industrial Disputes Act. The issue has been addressed in various judgments of the Supreme Court and High Courts, and the petitioner's industrial dispute lacks merit and should be dismissed.

15. The Petitioner in support of his claim examined himself as WW1 and also filed photocopies of 6 documents which were marked as Ex.W1 to W6. Ex.W1 is the news paper advertisement, Ex.W2 is panel list, Ex.W3 to W4 are service certificates, Ex.W5 is form of notification of vacancies to the employment exchange and Ex.W6 is circular dated 14.7.1999. On the other hand, Respondent filed photocopies of 12 documents which were marked as Ex.M1 to M12. Ex.M1 to M4 are settlements between Respondent and All India State Bank of India Staff Federation. Ex.M5 is conciliation proceedings. Ex.M6 is another settlement. Ex.M7 is Memorandum of understanding. Ex.M8 is statement giving the particulars of 1989 messenger panel. Ex.M9 is statement of 1989 non-messenger panel. Ex.M10 is statement of 1992 panel. Ex.M11 is order of Hon'ble High Court in WA No.86/98 and Ex.M12 is order in SLP No.11886-11888.

16. On the basis of the pleadings and the submissions made by the parties, following points emerge for determination:-

I. Whether the action of the Respondent Management in terminating the services of the workman, Sri M. Seshagiri Rao, Ex-Messenger w.e.f, 31.03.1997 is legal and justified?

II. Whether the workman in terms of settlements arrived at between the Respondent Bank Management and the Federation of Employees is entitled for regularization absorption in the service of Bank?

III. To what relief, the workman is entitled for?

Findings:

17. **Points No. I & II**:- The workman claims that he had been working with the Respondent Bank since 1985 on temporary basis. In the year 1988, Respondent No. 2 issued advertisement for calling applications from the then temporary subordinate employees for the post of messenger. The workman moved application and he received interview call letter from bank to attend the interview, workman attended interview and Respondent Bank prepared a panel List of all the successful candidates in the year 1991 and the Petitioner's name appeared also in the panel list. The Respondent Bank utilized the services of the empanelled employees and workman on temporary basis till March 1997 and some of the empanelled employees were given permanent appointment basing on the number of days of service put up by them. Thereafter, the Respondent No.2 issued a Letter dated 25.03.1997 directing all Branch Managers not to utilize the services of the empanelled Messenger and to declare that the panel list of 1991 will lapse by 31.03.1997. Therefore, all the remaining empanelled employees as per the panel list of 1999, were denied employment after 31.03.1997. It is further submitted by the workman that Respondent No.2 issued another advertisement in the year 1991 calling application for interview from the then temporary working messengers and selected some of the candidates among the applicants and prepared another panel list of 80 employees. The said panels lapsed in March 1997. However, surprisingly all the temporary employees as per Second panel List of 1993 were given permanent appointment and that order was issued just 15 days before the lapse of the panel List. It is further submitted that the empanelled employees of Second panel List of 1993 were juniors to the temporary employees' of first panel list of 1991 in terms of number of days of service put up by them. Therefore, the act of Respondent Bank appointing the junior employees of second panel list ignoring the senior employees of the first panel list of 1991 is discriminatory, arbitrary and illegal which goes to indicated that the Respondent Bank chose to favour the employees of second panel List of 1993 for the reason best known to the Respondent Bank.

18. On the other hand, the Respondent countered the allegations made by the workman and submitted that the persons who do not have the requisite number of days of service as per the settlement, could not be considered for permanent absorption. It is contended that the bank had never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that the candidate will be considered for the absorption in the vacancies that may arise up to 1992. Since the panel list had already lapsed on 31.03.1997, and the vacancies were already filled up by absorbing the temporary attendants and daily wagers/casual employees respectively in order of their seniority in the empanelment, therefore, the consideration of engaging their services including workman could not have arise. Therefore, panel list of daily wagers prepared in the year 1992 was used for filling vacancies which arose up to end of 1994 and the said panel list automatically lapsed after the filling of the aforesaid vacancies.

19. In support of his claim, the workman has examined himself as WW1 and in chief examination, he reiterated his claim as made in his petition. Further he stated that Ex. W2 is the document referred List of empanelment Ex.

W3-W4 are service certificates according to which the workman has worked for total number of 341 days. In cross examination, WW1 states that he was not given any posting order at the time of joining the service nor at any other time. On the oral instruction of Branch Manager, he worked in the Branch. He further admitted in the cross examination, "I was appointed as temporary attendar for 85 days initially w.e.f. 2.4.1985. I was not sponsored by any employment exchange. I did not undergo the regular selection process before my appointment as a temporary attendar. I did not work for 240 days in any year in my entire service in the bank. I applied in response to an advertisement issued by the bank as per the settlement entered between the bank and the union. I was called for interview and my name was included in the panel of temporary attendars. The panels were prepared basing on the no. of days of service put in by the temporary employees. Some of the employees whose names were included in the panel were given regular employment in the bank in order of their seniority in the panel. I am not having any document to show that any person who had worked for less no. of days than me was given regular appointment in the bank. I am not having any document to show that any of my juniors are continuing in service. I was not given any letter stating that I was terminated form service." He further states that he is not aware of any settlements between the Management and the Union. On the other hand, the Respondent has examined MW1 and in his chief examination the witness had stated that the petitioner was included in the panel list 1991 however, as the existing vacancies at that time were exhausted, his turn didn't come, and he could not be given permanent employment in the bank. All the appointments were made strictly in accordance with the settlement between the SBI management and the SBI Staff Federation. The witness has also stated that as per the seniority was determined on the basis of number of days as temporary service put in by the employee in the given period and all the appointments were made as per seniority. Witness states that the petitioner had not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were not terminated from service by the Bank. The vacancies were filled up on regular basis with the temporary employees from the panel list and which were expired in terms of settlement on 31.03.1997 and there were no vacancies to absorb rest of the empanelled employees.

20. In view of the above statement of witness, it manifests that, the workman did not work for 240 days continuously in any year in the service. Therefore, the protection of the provisions under Section 25 (f) of Industrial Disputes Act, 1947 against the retrenchment is not available to the workman. The initial burden of proof was on the workman to show that he had completed 240 days of continuous service in the employment of bank from the date just preceding date of termination, but he failed to discharge his burden of proof.

In the case of **Mohan Lal v. Management BEL 1981 SCC 225, the Hon'ble Apex Court have held that**:

> *"Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act. he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."*
>
> *"Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine*
>
> *first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

Therefore, in view of the above law, the claim of the workman that Respondent has not exhausted procedure before his retrenchment from service is not tenable.

21. Further, the workman claimed that his name was included in the empanelment of 1991 for regularization on temporary posts, but he was not regularized in the service and the temporary employees junior to him in service

were appointed on permanent posts from the empanelment of 1993**.** However, WW1 in cross-examinations has admitted that he was not sponsored by the Employment Exchange. He could not indicate any instance of regularizing the temporary employee junior to him, from the panel list of 1991. Since, as per settlements arrived at between the Federation of Bank Employees and Respondent Bank Management, the vacancies for the empanelled employees of 1991 were available which would arise upto December, 1994 and those vacancies were absorbed from the panel list 1991 in order of seniority. Therefore, due to non-availability of the vacancies, and the workman not having the requisite number of days in service as compared to the other employees who were ranked senior to him in the list. Therefore, workman being junior to other workmen in the panel, could not be granted regularization/absorption as a permanent employee in the Bank. It is admitted by the workman that the panel list was prepared in terms of settlement arrived at between the State Bank Management and Federation of State Bank Management Employees Association and therefore, same is binding on both parties under the provision of Section 18 (1) of the Industrial Disputes Act. Therefore, in view of the above, settlements and awards is also binding on the workman.

In the case of **National Engineers Industries v. St. of Rajasthan Civil Appeal No. 16832/1996 dated 01.12.1999, three judges bench of Hon'ble Apex Court have held**:-

"In Ram Pukar Singh and Ors. Vs. Heavy Engineering Corporation and Qrs. [1994] 6 SCC 145 this Court said that a settlement arrived at between the management and the sole recognised union of workmen under section 12(3) read with section 18 of the Act would be binding on all the workmen whether members of the union or not."

Therefore, mere enlisting the name of workman, a in the list of employees for regularization, it does not entitle workman for absorption in the Bank's service as a permanent employee unless the vacancy is available at the stage of his seniority. As per the settlement, the panel lists expired on 31.03.1997, and thereafter, the life of the panel list could not be extended. In the Writ Petition No. 12964/1994, the Hon'ble High Court observed:-

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not at all the case of the petitioner that any of the terms of the settlement has been violated by the Bank's Management. If the petitioner had worked in the Bank on Part-time basis before 31.5.94, that itself would not vest in his a right to claim that his services should be regularised on permanent basis against a full time cadre post. The claim put forth by the petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the petitioner to claim any right which flows from the settlement between the union and the Bank Management. As already pointed out that it is not the grievance of the petitioner that some right which has flown from the settlement in favour of the petitioner has been denied by the Bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the petitioner. Writ Petition fails and is accordingly dismissed. No costs."

Therefore, the claim of workman in the present matter can not be considered beyond the terms and conditions of aforesaid settlement between Bank Management and Federation of employees.

Further, in the case **of State of U.P. v. Harish Chandra AIR 1996 SC 2173, the Hon'ble Apex Court have held**:-

"Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule, the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which in contrary to law. This being the position and in view of the Statutory rule contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist."

Similarly in the case of **Syndicate Bank and other Vs. Shankar Paul AIR 1997 SC 3091, it was held** :

"Temporary were made from the empanel of eligible candidates prepared by calling names from employment exchange, the empanel was valid for only year. When the said employee claimed permanent absorption in service, the Apex Court has held that, whatever conditions regarding these empanelled candidates had they come an end on the expiry of one year."

In the present matter also, since the panel list 1991, which was prepared for the vacancies arising up to December 1994, its life expired on 31.03.1997, and it could not be extended after the said expiry date. Further, the panel list exhausted due to from the vacancies available upto 1994 with the absorption of empanelled senior employees. Thus, the workman being junior in that panel list seniority could not get regularization / absorption in the service. Although numerous pleas have been taken by the Petitioner in his claim statement, but as per settled law, here, we are confined to the reference through which the dispute of dismissal of workman has been referred to the Tribunal for adjudication. In view of fore gone discussion, workman failed to prove his claim as alleged in his petition against the dismissal from service as well as claim for regularization and as such, the action of the Respondent bank in dismissing the services of Sri M. Seshagiri Rao, Ex.Messenger by way of oral orders w.e.f. 31.3.1997 is justified.

Points No. I & II is answered accordingly.

22. Point No. III:-

In view of the findings given in Points No. I & II, the claim of the workman against the dismissal order and for regularization of his service in Respondent Bank is unfounded and devoid of merits. Therefore, the workman is not entitled for any relief of reinstatement or regularization in the employment of Respondent Bank. Hence, his claim petition is liable to be dismissed.

ORDER

In view of the fore gone discussion, it is held that the action of the Respondent bank in dismissing the services of Sri M. Seshagiri Rao, Ex.Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for and consequently petition stands dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 25th day of July, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri M. Seshagiri Rao	MW1: Sri Rupakula Prakash Babu

Documents marked for the Petitioner

Ex.W1:	Photocopy of News paper advertisement
Ex.W2:	Photocopy of panel list
Ex.W3:	Photocopy of service certificate dt. 16.8.88
Ex.W4:	Photocopy of service certificate dt. 9.2.98
Ex.W5:	Photocopy of form of notification of vacancies to the employment exchange dt.8.4.1999
Ex.W6:	Photocopy of Circular dated 14.7.1999

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non0messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 17 अगस्त, 2023

का.आ. 1334.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार आद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (668/2001) प्रकाशित करती है।

[सं. एल L-12012/252/1998-आईआर(बी- II)]

सलोनी, उप निदेशक

New Delhi, the 17th August, 2023

S.O. 1334.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 668/2001) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workman.

[No. L-12012/252/1998-IR(B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CGIT-CUM-LABOUR COURT &

EPF APPELLATE TRIBUNAL

CHENNAI

ID 668/2001

(CGID 252/99)

Present:

DIPTI MOHAPATRA LLM

Presiding Officer

Dtd. 12.07.2023

BETWEEN

Sri B. Anandan : Petitioner

C/o Sri Bhavaraghamurthy

Odiyathur Village & Post

Villupuram (via)

Pincode-605701

AND

The Management of Indian Bank : Respondent

Head Office

31, Rajaji Salai

Chennai

Appearance:

For the 1st Party/Petitioner : Advocate, M/s K.M. Ramesh

For the 2nd Party/Respondent : Advocate, M/s Aiyar & Dolia

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/252/98/IR (B.II) dtd. 19.04.1999 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"*Whether the management of Indian Bank is justified in terminating the services of Sri B. Anandan w.e.f. 22.05.1996 and if not, to what relief the workman is entitled*?"

2. The Petitioner briefly states his case that he joined as Sub-Staff on 01.07.1974 in the Respondent Bank at Chennai and discharged his duties efficiently. He was suspended on 01.07 1976 in contemplation of initiation of Disciplinary Proceeding on allegation of misconduct. He was alleged to have drawn a Pay Order for Rs. 5,000/- from the account of one R. Subramanian to favour one Sri V. Arumugam. For the purpose, the Petitioner forged false document and signature. A Criminal Case was also lodged before the Villupuram Police Station in Crime No. 1459/1976 and a criminal was registered in CC No**.** 343/1976-before the Sub Divisional Magistrate, Villupuram which was disposed of with an Order of Conviction. The Petitioner was sentenced to undergo 2 years Rigorous Imprisonment and imposed fine of Rs. 500/- vide the judgment 08.02.1980. Consequent to his conviction, the Petitioner was issued with an order of dismissal on 12.04.1980 with effect from 08.02.1980. The Petitioner challenged the Conviction order before the District & Sessions Judge, Cuddalore in CA 84/1980, which was allowed in his favour and the Petitioner was acquitted vide the Session's Court Order dtd. 20.04.1982. The Petitioner was reinstated on 21.10.1982 and paid with all arrears and allowances in view of the acquittal order of the Session's Court. Thereafter, he was again placed under suspension in contemplation of initiation of Domestic Enquiry against him. The Petitioner moved the Hon'ble Court challenging the order of suspension and obtained a Stay Order on all further proceedings. The Respondent approached the Hon'ble Court and obtained the Vacation Order of the Stay. The Respondent was permitted to proceed with the enquiry but not to implement the result of the enquiry until permission is accorded by the Court. Accordingly, the Enquiry was proceeded with and concluded on 07.09.1986 and the Enquiry Officer rendered findings on 30.06.1987. The Respondent sought permission from the Hon'ble Court to implement the result of the Enquiry. At this stage the Petitioner Withdrew the Writ Petition. Thus the Respondent issued the 2nd show cause Notice on 15.04.1996 and finally the Disciplinary Authority terminated the Petitioner from job vide his order 22.5.1996 following the Domestic Enquiry. The Petitioner exhausted the Appeal remedy and being unsuccessful, raised the dispute under Section-2(A). The matter was referred to Principal labour Court, Chennai in CGID No. 252/1999. After constitution of CGIT-cum-Labour Court, Chennai, the case was received from Principal Labour Court and re-numbered ID 668/2001. The ID case was disposed of on hearing the parties. The Tribunal held the punishment of dismissal imposed on the Petitioner by the Respondent was proper and justified. The case was disposed of vide Order dtd. 05.02.2003. The relief sought for by the Petitioner was denied.

3. The Petitioner moved the Hon'ble High Court of Madras in WP No; 16604/2003 challenging the Tribunal's order dtd 5.2.2003 raising question on the on the validity of the Domestic Enquiry . The Hon'ble High Court of Madras Vide order dtd 28.02.2017 while set aside the Order dtd 05.02.2003 of this Tribunal, remanded the case for fresh hearing of the parties and to decide the validity of the Domestic Enquiry by framing a Preliminary Issue and other issues.

4. In compliance to the direction of the Hon'ble Court, Preliminary Issue was framed and the parties were afforded with sufficient opportunity to present their submission on the point of validity of the fairness of the Domestic Enquiry. The Preliminary Issue was decided by this Tribunal on dtd. 17.02.2020 as per Separate Sheet. The Domestic Enquiry was held fair and proper and the parties were granted with liberty to adduce their evidence / submission with regard to other issues i.e.

(i) If the punishment of dismissal imposed on the Petitioner is disproportionate to the gravity of guilt established?

(ii) If not, to what relief the Petitioner is entitled to?

The Petitioner examined himself as WW1 whereas the Respondent declined to examine any Witness. Both parties relied on the documents already filed during the initial period of hearing of the case.

Points (i) and (ii)

5. Both the above points, since interlinked inter-alia are taken up together for a common discussion. The Petitioner challenges the validity of the domestic enquiry on some points (i) that the findings of Enquiry as perverse as much as the proceeding lingered for an unusual time (ii) the very initiation of the disciplinary proceeding overriding the final verdict of a Sessions Court is not permissible, illegal and bad in law. While he adduced evidence that the imposition of punishment of dismissal is beyond the principles of natural justice and such punishment pushed him to severe financial crisis as has not been in any gainful employment after his termination. Besides, the Petitioner mentions in his Affidavit-Evidence that he has already reached the superannuation on 31.10.2008. Thus, his prayer for reinstatement in his Claim Statement is not possible but in lieu of that he is entitled to monetary benefits from the date of termination of service till the date of reaching the age of superannuation and other terminal benefits. So far the validity of the domestic enquiry is concerned, it is contended by the Petitioner that the Respondent is debarred to proceed with a domestic enquiry on the same allegation wherein the Petitioner was acquitted by the Sessions Court.

6. In this context, the Counsel for the Respondent advances his argument that in view of the Acquittal Order dtd. 20.04.1982 in CA 84/1980 passed by the District & Sessions Judge, Cuddalore, the Respondent reinstated the Petitioner on 21.10.1982 and paid with all arrears and allowances. Besides, the order of acquittal of the Petitioner by the Sessions Court while is binding upon the Respondent so far the reinstatement of the Petitioner is concerned and which was implemented with immediate effect, the said Acquittal Order is not binding upon the Respondent to

withhold the departmental enquiry. Thereafter, in contemplation of initiation of domestic enquiry, the Petitioner was put under Suspension. Ironically, the judicial verdict of the Apex Court which is relied by the Petitioner in the case of ***Captain M. Paul Anthony Vs. Bharat Gold Mines and Another in Civil Appeal No. 1906/1999 dtd. 30.03.1999 reported in 1999-(3)-SC-679*** is applicable to the case of the Respondent. The Service Law with regard to the departmental enquiry and simultaneous continuance of with criminal proceedings is discussed and observed by the Hon'ble Court that "***Law on this point restated that scope of these two proceedings are different and they can be continued independently"***.

7. Therefore, the initiation of departmental proceeding against the Petitioner is held proper. So far the allegation of delay in proceeding of domestic enquiry, it is pertinent to mention that when the Enquiry was fixed for hearing on18.11.84, the petitioner moved the Hon'ble Court vide in10122/1984 claiming he should be represented through a Counsel. And also moved the Hon'ble Court in WP 9967/1985 in WMP 15058/1985 and obtained ex-parte interim injunction on 27.09.1985 restraining the Bank from holding enquiry. The Respondent Bank approached the Hon'ble Court in WMP 1284/1986 for vacation of the ex-parte interim injunction. The Hon'ble Court vacated the interim injunction on 11.02.1986 and granted due permission to the Respondent to proceed with the Enquiry, but directed to hold the implementation of the result of the Enquiry till permission is accorded by the Hon'ble Court. In between several Writ Petitions which were raised by the Petitioner remained pending disposal and some were disposed of. The Enquiry was concluded on 07.09.1986, and the Enquiry Officer rendered findings on 30.06.1987. The Respondent sought permission from the Hon'ble Court to implement the result of the Enquiry. At this stage the Petitioner Withdrew the Writ Petitions WP 10122/84 on 24.03.94 and the WP 9967/1985 on 21.11.95.. Thus, the delay in proceeding was not attributed by the Respondent but by the Petitioner who tried his level best to stall the proceeding. He could manage to drag the proceeding for an unusual period by approaching the Hon'ble Court every now and then.

8. Admittedly, the Petitioner was suspended in contemplation of initiation of domestic enquiry for the alleged offence that he has forged and manipulated documents and managed to draw Rs. 5,000/- from the account of one R. Subramanian to favour one Sri V. Arumugam. The Petitioner issued token bearing no. 552 in favour of his Brother Sri Sanjeevi and entered the token number in Pay Order and also the folio no. 9/4235 to mislead that the Pay Order has been debited in Ledger. The Petitioner further put a "Pay Cash" stamp on the Pay Order and also for the signature of the Accountant in the space provided for passing the Pay Order making it appear that the Pay Order has been passed for payment. The Petitioner payment further kept the Pay Order in Token Register alongwith other genuine Pay Orders and Cheques and placed the said Register in Cash Counter at its usual place thereby enable his brother to receive the payment under the forged Pay Order. The above facts was duly established by the evidence led through the Witnesses during the enquiry proceedings. In this context, it is further contended that the explanation submitted by the Petitioner to the Show Cause Notice proposing the punishment was lack of any substance and also contrary to the provision of the Law. The issuance of Show Cause Notice proposing the punishment never defeated the principles of natural justice as the guilt of the Petitioner was amply established in the enquiry. It is pertinent to mention the technicality of Evidence Act does not apply in the case of domestic / departmental enquiry. Reliance is placed in the case of ***State of Haryana and Another Vs. Rattan Singh reported in AIR 1997 SC 1512*** wherein their Lordships had held "***it is well settled that in a domestic enquiry sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for the prudent mind are permissible. There is no allergy to hearsay evidence, provided it has reasonable nexus and credibility***".

Besides, the alleged commission of the fraudulent action of the Petitioner is a gross misconduct so far as the Service Rule is concerned. By such fraudulent action the Petitioner was found guilty of misconduct specified in Clause -19.5(j) of Bipartite Settlement dtd. 19.10.1966.

9. Further, when the general public repose great confidence in Banking business, the employees / staffs are required to maintain the highest level of integrity, honesty, sincerity and devotion to duty. Any deviation in this regard, if caused by any of the Bank officials / Staffs, would shatter the confidence reposed by the general public, and certainly tarnish the reputation of the Bank. In such circumstance, the misconduct committed by any such Officer / Staff is viewed seriously and cannot be pardoned at any stretch of circumstance. Thus, even if the Petitioner was acquitted in a Criminal Case, it would not be sufficient ground to consider his claim for reinstatement with an established guilt of misconduct much less from such a Financial Institution which gained highest reputation from the Society at large for rendering faithful / trustworthy services in financial sector even in providing mini-micro level requirements of the general public.

10. The acts of misconduct proved against the Petitioner are very serious and grave in nature and the findings of the Enquiry Officer in the punishment thereof is appropriate as much as the integrity of the Petitioner, when is questionable, his continuance in financial institutions like Respondent Bank is highly un-desirable. Hence, the punishment of dismissal imposed by the competent Authority of Respondent on the Petitioner is held just, proper and proportionate to the guilt of ''**Gross miscounduct"** against him and warrants no interference.

In the result. The Petitioner is not entitled to any relief as sought for.

The Points (i) and (ii) are answered against the Petitioner.

The ID case stands dismissed.

The reference is answered accordingly.

DIPTI MOHAPATRA, Presiding Officer

ID 668/2001/ CGID 252/99

Witnesses Examined in Preliminary Issue : None from both sides

Witnesses Examined for Other Issues:

For the 1st Party/Petitioner : WW1, Sri B. Anandan

For the 2nd Party/Management : None

Documents relied on by both parties as per the Exhibit List enclosed with Final Order dtd. 05.02.2003

On the petitioners side

Ex.No.	Date	Description
Ext.W1	26.07.1976	Show Cause Notice issued to the Petitioner
Ext.W2	09.10.1976	Explanation to the Show Cause Notice
Ext.W3	20.04.1982	Judgment in CA No. 84 of 90
Ext.W4	19.03.1996	Second Show Cause Notice issued to the Petitioner
Ext.W5	15.04.1996	Petitioner's explanation to the Second Show Cause Notice
Ext.W6	22.05.1996	Order of the Respondent terminating the services of the Petitioner
Ext.W7	05.07.1996	Petitioner's appeal to the General Manager of the Respondent
Ext.W8	18.12.196	Letter from Petitioner to the General Manager of the Respondent

On the Respondent's side

Ex.No.	Date	Description
Ext.M1	01.07.1976	Complaint to the Police
Ext.M2	18.12.1978	Charge Sheet framed against the Petitioner
Ext.M3	08.02.1980	Sub-Divisional Judicial Magistrate Judgment
Ext.M4	21.10.1982	Respondent's order revoking the order of termination and placing the petitioner under suspension.
Ext.M5	07.09.1986	Enquiry Proceedings
Ext.M6	11.01.1997	Appellate Authority letter
Ext.M7	30.06.1987	Findings of Enquiry Officer

नई दिल्ली, 17 अगस्त, 2023

का.आ. 1335.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार साउथ सेंट्रल रेलवे के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय, हैदराबाद के **पंचाट** (12/2012) प्रकाशित करती है।

[सं. एल-12025/01/2023-आईआर (बी-I)-75]

सलोनी, उप निदेशक

New Delhi, the 17th August, 2023

S.O. 1335.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 12/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad as shown in the Annexure, in the industrial dispute between the management of South Central Railway and their workman.

[No. L-12025/01/2023-IR(B-I)-75]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 13th day of July , 2023

INDUSTRIAL DISPUTE L.C.No. 12/2012

Between:

Sri Bhogi Raja Mogili,

S/o B. Mallaiah,

R/o Madikonda,

Hanamkonda(M), Warangal District. ..….Petitioner

AND

The General Manager,

South Central Railway,

Rail Nilayam, Secunderabad. ….Respondent

Appearances:

For the Petitioner : M/s. R. Yogender Singh, C.V.N. Rama Krishna & S. Maheshwarudu, Advocates

For the Respondent: M/s. K. Sunil Goud and V. Kiran Kumar, Advocates

AWARD

Sri Bhogi Raja Mogili who worked as Gangman Class-IV (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents South Central Railway seeking for setting aside the removal order dated 17.7.2003 issued by Respondent as illegal, arbitrary and consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

1) The Petitioner was appointed by the Respondent as Gangman Class-IV W.e.f- 17.7.2003 he served the Respondent organization without any complaint or stigma on his service conduct. Unfortunately, his services were terminated w.e.f. 18-07-2003, on the ground of unauthorized absenteeism from the duties for the period commencing from 09.1.2001 to 12.12.2001 for a period of 169 days. It is submitted that a charge sheet was issued and an enquiry was conducted, wherein it was observed that he was absented for 169 days in broken spells in addition to 133 days for which period there is no Charge sheet or any other evidence. Basing on this, an order of removal was passed on 17.7.2003. After so many Appeals and Reviews, representations and letters the Respondent has issued proceedings dated 29.07.2010, stating that all his Appeals and Reviews were dismissed, if at all he wants any relief he can apply for "Compassionate Pension". It is further submitted that, in each and every Appeal, the Petitioner submitted to the Respondent about the reason for his alleged absence. Even in his last representation dated 8.3.2010, he submitted the reason in detail which is as follows: For the above charge of allegation, I submit that I had not availed the said leave of (166) days and (133) days leave during the years 2001 and 2002 deliberately or intentionally, but I had availed the said leave of (166) days as Casual leave or Special Casual leave or other than Casual leave in different months, on different dates in broken spells in piece - meal as 01 day, 02 days, 03 days, 08 days, 10 days, 11 days, 13 days, 17 days, 18 days, 19 days and in one month 31 days respectively on (17) Occasions during the year January, 2001 to

December, 2001 as shown above for attending on my insane and mentally mad son, aged (18) Years, who was met with an accident by Auto Riksha, while going to School on a bicycle and finally died on 11.6.2003 by drowning in a tank and also to attend on my old aged father, who was suffering from Asthma disease and other ailments in old age as detailed below:- “"Sir, I submit that my job is the only source of our livelihood, I have to maintain and feed my family members out of my monthly Salary only. My family consisting of (07) members including me. I have no other properties or income to maintain my family. So, I always attended to my duties regularly, and continuously by maintaining punctuality. I never absented to my official duties during my 12 Years service from 1991 to 2003, except in the years 2001 and 2002 for the following reasons under dire need of my presence at my home under compelled and unavoidable circumstances. So, in view of my above stated facts, I always give my first preference to my duties, rather than to my domestic affairs. My motto is Work is Worship"' It is submitted that, after this the Petitioner filed an Industrial Dispute before the Hon'ble Regional Labour Commissioner (Central), vide his Application dated 18.1.2012, posted on 20.1.2012, but there is no response from that authority which resulted into filing of this case. It is submitted that the Petitioner has filed this case after exhausting all departmental remedies. Moreover, the absence from duties is neither wanton nor deliberate. As per the Judgment of Hon'ble Supreme Court reported in 2003 (4) SCC 27 (Nilajkar Vs. Telecom District Manager) which says that "Point of Limitation cannot be taken into consideration. When the Petitioner is agitating the case for considerable period". Here in this instant case, the Petitioner was agitating before the Department, which is establishing his need of employment and his need to his family members wherein 6 members of the family are depending on his income. His family is consisting of his bed-ridden father and mother his two daughter and wife. In view of the above, it is prayed that this Hon'ble Court may be pleased to set aside the removal order dated 17.7.2003, which was taken upto the Appeal and which was at last confirmed through Proceedings dated 29.7.2010 by considering his need of employment and his devoted past record and length of service by directing the Respondent to reinstate him into their service and pass such other order or orders as this Court may deem fit and proper in the circumstances of the case.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

It is humbly submitted that the petitioner was removed from service for unauthorized absence by the competent authority after following the laid down rules for initiating disciplinary action. The petitioner had participated and accepted the charges of unauthorized absence during the inquiry and had not responded to the inquiry report. He was unauthorisedly absent for a period of 169 days from 09.01.2001 to 12.12.2001 in different spells despite being unauthorisedly absent for another 133 days from 01.01.2002 to 28.12.2002. Charge memo was issued to him which was duly acknowledged by him on 25.05.2002. It is submitted that an inquiry was ordered and the inquiry officer submitted his report holding the charges as proved. The copy of the inquiry report was sent to him and the petitioner did not respond to the inquiry report. The disciplinary authority therefore, imposed the penalty of removal from service which was affirmed in appeal and revision. The petitioner under the pension rules loses his pensionary benefits but however, he is entitled for compassionate pension equaling to 2/3 of the pension if the competent authority feels so he may grant the same to the petitioner. However, the petitioner has to apply for the same but instead he preferred mercy appeals to the ADRM, and DRM and later to the General Manager which is not provided under the rules. The petitioner is not entitled for special casual leave and casual leave for the serving employees is restricted to only 8 days per year. Under such circumstances, how the petitioner can contend that he had availed special casual leave and casual leave for 166 and 133 days during the year 2001 and 2002 respectively? The petitioner ought to have sought for leave from the competent authority and got it sanctioned for attending to his son's illness and the fact remained that he did not seek for sanction of leave nor his absence covered by medical certificate. Under such circumstances, it has to be treated as unauthorized absence only. The problems faced by the petitioner with his son is in no way entitling him to remain unauthorisedly absent. The appropriate remedy for the petitioner lies in approaching the Hon'ble Central Administrative Tribunal which is constituted for redressal of the grievances of the Central Government Employees. The petitioner had approached the wrong forum by filing the LC herein. As per the Administrative Tribunals Act, 1985 the aggrieved person should approach the court of law within a period of one year from the date of order by which he is aggrieved. The petitioner cannot sleep all the while and approach the court of law after a period of ten years. The petitioner was given the option of seeking grant of compassionate allowance under Rule No. 69 of the Pension rules, but without approaching the appropriate forum and without seeking for compassionate allowance, he is approaching this Tribunal.

4. Petitioner got examined himself as WW1 and marked photocopies of seven documents Ex.W1 to W7. Ex.W1 is the representation of WW1. Ex.W2 is charge sheet; Ex.W3 is removal order; Ex.W4 is Appellate order; Ex.W5 is order in revision; Ex.W6 is order of Appellate Authority; and Ex.W7 is appeal to RLC(C) along with postal receipt and acknowledgement.

5. Heard argument of Learned Counsel for the Petitioner. Perused the record.

6. On the basis of the rival pleadings of both parties, the following points emerge for determination:-

I. Whether the claim of the Petitioner is delayed and has become stale claim?

II. Whether domestic enquiry held by Respondent Management against Petitioner is legal and valid?

III. Whether this Tribunal has got jurisdiction in the present claim?

IV. Whether termination order dated 17.7.2003 of the Petitioner from service passed by Respondent Management is illegal and liable to be set aside as alleged in the claim statement?

V. Whether punishment imposed on the Petitioner is disproportionate to the charge levelled against the Petitioner?

VI. To what relief is the petitioner entitled?

Findings:-

7. Point No. I: Respondent has contended that as per law, the Petitioner has filed present petition after a period of 10 years. The Petitioner can not sleep all the while and approach the court of law after a period of 10 years. Therefore, Petition is time barred.

8. Perused the record. After holding the enquiry against the Petitioner, the Disciplinary Authority has removed the Petitioner from service vide order dated 17.7.2003 and feeling aggrieved by the order of the Disciplinary Authority Petitioner had filed an appeal before Appellate Authority and in appeal order of Disciplinary Authority of removal of Petitioner from service was confirmed through proceeding dated 1.11.2003 vide Ex.W4. Thereafter present claim petition has been filed by the Petitioner challenging the removal order dated 17.7.2003 and appellate order 1.11.2003, in the year 2012 after a long delay of about 9 years. Further, the Petitioner has submitted that in the case of **Nilajkar Vs. Telecom District Manager 2003 SCC 27** have held that, " Point of limitation can not be taken into consideration under the circumstances of the case for considerable period". Since Petitioner in the present matter was agitating before the Department by moving representation then Department has passed the order on 29.7.2010 and therefore, he filed this petition. Hence, it is not time barred.

9. Perused the record. It reveals from the record that Disciplinary Authority has passed removal order on dated 17.7.2003, and against that Petitioner has filed an appeal which was decided by Disciplinary Authority vide order dated 1.11.2003. Thereafter the Petitioner has moved a revision petition and that has also been decided by the Respondent Management vide order dated 10.3.2004 as the Ex.W5 shows. But Petitioner has not furnished any plausible explanation for not filing the petition against the impugned order thereafter until 2012. As regard the contention of the Petitioner that he moved the representation to Respondent Management which got decided by the authority on 29.7.2010, thereafter, he filed this present petition. But, merely moving the representation after passing of order dated 1.11.2003 by Appellate Authority, it can not be said in any circumstances that the Petitioner was pursuing under legal process during said period. The legal remedy of filing the representation before Appellate Authority as per rules has already been exhausted vide order dated 1.11.2003 of Appellate Authority and also vide order dated 10.3.2004 passed by Revision Authority. The appropriate legal remedy which was available to the Petitioner against the impugned removal order was to approach proper forum of Tribunal but he did not do so within reasonable after impugned order dated 17.7.2003. Mere filing of representation repeatedly can not be considered a plausible explanation for delay in approaching Tribunal against the removal order dated 17.7.2003 and 1.11.2003. Thus, the claim petition filed by the Petitioner is filed with inordinate delay and the same has become stale in view of the circumstances of the case.

Hon'ble Apex Court in the case of Nedungadi Bank Ltd., Vs. K.P. Madhavankutty and ors. Civil appeal No.638/2000 decided on 28.1.2000 have held,

"Law does not prescribe any time limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled Power is to be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the Respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact is could be said that there was no dispute pending at the time When the reference in question was made."

Therefore, as present claim has been filed by the Petitioner after inordinate delay of about 9 years, and no plausible explanation has been furnished or shown by Petitioner for such long delay. Thus, the Petitioner's claim against impugned order has become a stale claim.

Thus, Point No. I is answered accordingly.

10. Point No.II: From the perusal of the record, it reveals that the Petitioner has neither challenged the validity of domestic enquiry nor has raised any points regarding validity of domestic enquiry in his claim statement. Therefore, the validity of domestic enquiry is held legal and valid.

Thus, Point No.II is answered accordingly.

11. **Point No.III**:- This point pertains to the question whether the Industrial Tribunal has got jurisdiction to adjudicate the present claim. In this context, Respondent contended that the proper remedy for the Petitioner lies in approaching the Hon'ble Central Administrative Tribunal which is constituted for the redressal of grievances of the Central Government employees. As per Administrative Tribunal Act, 1989, the aggrieved person should approach the Court of law within a period of one year from the date of order by which he is aggrieved. The Petitioner cannot sleep all the while and approach the court of law after a period of ten years.

12. Perused the record. Present Petition u/s 2A(2) of the I.D. Act, 1947 has been filed by the Petitioner to set aside the removal order dated 17.7.2003 passed by Respondent authority after conducting the departmental enquiry against the Petitioner. Petitioner feeling aggrieved by that order has filed this petition in this Tribunal. In this context, the decision of Hon'ble Supreme Court in the case of **Telecom District Manager and others vs. Keshab Deb, 2008(8) SCC 402,** is relevant wherein, Hon'ble Apex Court have held,

"14.In a case of present nature where inter alia an employee maintains a writ petition not only on the ground of violation of equality clause enshrines under Articles 14 of the Constitution of India but also on the ground of violation of the provisions of the Industrial Disputes Act, 1947, he has an option to choose his own forum. Section 28 does not bar the jurisdiction of the Central Administrative Tribunal. It saves the jurisdiction of the Industrial Tribunal. An employee who claims himself to be a workman, therefore, will have a right of election in the matter of choice of forum. It is, therefore, not correct to contend that the Central Administrative Tribunal had no jurisdiction to pass the impugned judgement. Furthermore the Respondent claimed regularization in services. Such an application was maintainable. As to whether he would be entitled to such a relief or not, however, is a different question."

Therefore, in view of the law laid down by the Hon'ble Apex Court, Petitioner has option to choose the forum to file petition for redressal of his grievance against removal order. Therefore, this Tribunal has got jurisdiction to decide the present dispute.

Thus, Point No.III is answered accordingly.

13. **Points No.IV & V** :- In the present matter Petitioner has set up his case that charge sheet was issued and an enquiry was conducted wherein it was observed by Disciplinary Authority that he was absented for 169 days from duty in broken spells. But in addition, thereto, he has also been held guilty for absence from duty for further 133 days and for that conduct of the Petitioner for absenteeism of 133 days no charge sheet has been served upon the Petitioner. Therefore, the order of removal passed against Petitioner basing upon the absenteeism of 169 days in broken spells in addition of 133 days absenteeism is illegal.

14. In this context perusal of the removal order dated 17.7.2003 goes to reveal that Disciplinary Authority has passed the removal order of the delinquent workman from service for the proved charge of unauthorized absence for 169 days in broken spells for the period from 9.1.2001 to 12.12.2001. After charge has been proved against the delinquent the Disciplinary Authority decided to impose the penalty of removal of the Petitioner from service with immediate effect. The said punishment order dated 17.7.2003 does reveal that charge for 169 days absenteeism against the Petitioner has been proved and he has been held guilty. The removal order of the Petitioner was passed for said charge only. The conduct of Petitioner for absenteeism from duty for further 133 days has been mentioned in the punishment order just to reflect the habitual conduct of the Petitioner and lack of devotion to the duty. Therefore, this contention of the Petitioner is misconceived in this regard and same is liable to be disallowed. Therefore, the plea taken by Petitioner in this regard is not acceptable.

15. Further, it is submitted by the Petitioner that he has submitted the reasons before enquiry for his alleged absence from duty during the said period as alleged in the charge sheet but the Disciplinary Authority did not consider his ground. Reason has been assigned by the workman for his absenteeism is that " since he was attending his insane/mentally mad Son and was also attending his old aged father". But the said reason will not become an excuse for the Petitioner for absence from duty without seeking sanction order of leave from the competent authority. Therefore, the plea taken by the Petitioner is not acceptable under these circumstances for his unauthorized absence for long duration from duty.

16. In this context, the Respondent has contended that the Petitioner is not entitled for any special leave or casual leave, as serving office employees have been restricted to only 8 days casual leave per year. Under such circumstances, Petitioner can not take the plea that he had availed special casual leave or casual leave for 166 days or 133 days during the years 2001 and 2002 respectively. It is further contended that Petitioner has sought only leave from the competent authority and not even get it sanctioned. Non- sanction of leave and his absence not covered by the medical certificate. Under such circumstances, it is to be treated as unauthorized absence only. The Petitioner's plea is that his Son was insane and he was looking after him, for this reason Petitioner become unauthorizedly

absent. It is mentioned in the removal order dated 17.7.2003 that he Petitioner remained unauthorizedly absent for 169 days in broken spells from 9.1.2001 to 12.12.2001 without having covered in any leave or document. Therefore, without sanctioned leave Petitioner remained absent from duty unauthorizedly.

17. As far as proportionate punishment of removal of Petitioner from service is concerned, the Petitioner was charged for unauthorized absence from duty totaling for 169 days during the period from 9.1.2001 to 12.12.2001 and charge has been proved against him during the enquiry. He failed to furnish any plausible explanation for his unauthorized absence from duty. Since the Petitioner was employed in the Railway Department which comes under the necessary services of public utility, therefore, such long unauthorized absence of Petitioner from duty amounting to serious misconduct and same cannot be tolerated by any reasonable employer. Any reasonable employer in such circumstances would impose punishment of removal from service of such employee. Therefore, keeping in view the seriousness of the charge, it can not be said that the punishment of removal imposed upon the Petitioner is disproportionate to the charge. Hence, the removal order passed on the Petitioner is held legal and justified.

Thus, Points No. IV and V are answered accordingly.

18. Point No.VI: In view of the fore gone discussion and finding in Points No. I to V I am of the considered view that the Petitioner is not entitled to any relief as prayed for.

ORDER

In the result, the petition is dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 13th day of July, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Bhogi Raja Mogili	MW1: Nil

Documents marked for the Petitioner

Ex.W1:	Photocopy of representation dt.8.3.2010
Ex.W2:	Photocopy of charge sheet dt. 13.6.2002
Ex.W3:	Photocopy of removal order dt.17.7.2003
Ex.W4:	Photocopy of appellate order 1.11.2003
Ex.W5:	Photocopy of revisional order 10.3.2004
Ex.W6:	Photocopy of order on the appeal dt.8.3.2010
Ex.W7:	Photocopy of appeal to RLC(C) along with postal receipt and acknowledgement.

Documents marked for the Respondent

NIL

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